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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 77, No. 138

Wednesday, July 18, 2012

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 77, No. 138
Wednesday, July 18, 2012

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release Nos. 33–9337; 34–67432]

Securities Act Industry Guides

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendments.

SUMMARY: Notice is hereby given of the publication of technical amendments to Guide 3, Statistical Disclosure by Bank Holding Companies (''Industry Guide 3''), and Guide 7, Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations (''Industry Guide 7''), of the Securities Act of 1933 Industry Guides (''Industry Guides''). These revisions are to conform the Industry Guides to the FASB Accounting Standards Codification™ (''FASB Codification'').

DATES: Effective July 18, 2012.

FOR FURTHER INFORMATION CONTACT: Jenifer Minke-Girard, Senior Associate Chief Accountant, or Annemarie Ettinger, Deputy Chief Counsel—Compliance, at (202) 551–5300, Office of the Chief Accountant, or Angela Crane, Associate Chief Accountant, at (202) 551–3400, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel, and others preparing registration statements and reports, as well as to the staff of the Securities and Exchange Commission (''Commission''). The Industry Guides are not rules, regulations, or statements of the Commission.[1]

I. Background

On June 30, 2009, the Financial Accounting Standards Board (''FASB'') issued FASB Statement of Financial Accounting Standards No. 168, *The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162* (''Statement No. 168''), to establish the FASB Codification as the source of authoritative non-Commission accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with U.S. generally accepted accounting principles (''U.S. GAAP''). Statement No. 168 became effective for financial statements issued for interim and annual periods ending after September 15, 2009. The FASB Codification reorganizes existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters. All guidance contained in the FASB Codification carries an equal level of authority.[2]

The FASB Codification affects those Commission rules, regulations, releases, and staff bulletins that refer to specific FASB standards or other private sector standard-setter literature under U.S. GAAP, because such references are now superseded by the FASB Codification. On August 18, 2009, the Commission issued interpretive guidance [3] to avoid confusion on the part of issuers, auditors, investors, and other users of financial statements about the use of U.S. GAAP references in Commission rules and staff guidance.

On August 8, 2011, the Commission adopted technical amendments [4] to various rules and forms under the Securities Act, the Securities Exchange Act of 1934 (''Exchange Act''), and the Investment Company Act of 1940 to conform those rules and forms to the FASB Codification. In the adopting release, the Commission noted that it authorized the staff to issue technical amendments to Industry Guide 3 and Industry Guide 7 to conform the Industry Guides to the FASB Codification.[5]

II. Discussion

The technical amendments to the Industry Guides result from a straightforward conversion of the prior U.S. GAAP reference to the corresponding reference in the FASB Codification. All of the changes are technical in nature and none of the changes are intended to represent a substantive change to the Industry Guides.

Dated: July 13, 2012.

Elizabeth M. Murphy,

Secretary.

PART 229—[AMENDED]

■ 1. In Industry Guide 3 (referenced in § 229.801 and § 229.802), amend paragraph III.C.1.(c) by removing ''Statement of Financial Accounting Standards No. 15 (''FAS 15''), Accounting by Debtors and Creditors for Troubled Debt Restructurings'' and adding in its place ''FASB ASC Master Glossary''.

Note: The text of Industry Guide 3 does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 2. In Industry Guide 7 (referenced in § 229.801 and § 229.802), amend Instruction 1 to paragraph (a) by removing ''FASB Statement No. 7'' and adding in its place ''FASB ASC Topic 915, *Development Stage Entities''.*

Note: The text of Industry Guide 7 does not, and this amendment will not, appear in the Code of Federal Regulations.

[FR Doc. 2012–17449 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Release No. 33–6384 (Mar. 16, 1982) [47 FR 11476].

[2] The FASB Codification is available at *http://asc.fasb.org/home.*

[3] Release No. 33–9062A (Aug. 18, 2009) [74 FR 42772].

[4] Release No. 33–9250 (Aug. 8, 2011) [76 FR 50117].

[5] *See id.*

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–66020A; File No. S7–19–10]

RIN 3235–AK69

Technical Amendment to Rules for the Temporary Registration of Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is making a technical amendment to rules under the Securities Exchange Act of 1934 (''Exchange Act'') to correct an inadvertent error. On December 21, 2011, the Commission extended the expiration date for the temporary municipal advisor registration regime to September 30, 2012. In the release extending the expiration date, the Commission inadvertently omitted a reference to Subpart N, which resulted in the deletion of Subpart N from the Code of Federal Regulations. With this technical amendment, the Commission is correcting the omission and adding back Subpart N to the Code of Federal Regulations.

DATES: *Effective Date:* July 18, 2012.

FOR FURTHER INFORMATION CONTACT: Yue Ding, Attorney-Adviser, Office of Market Supervision, at (202) 551–5842, Division of Trading and Markets, Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: On September 1, 2010, the Commission adopted interim final temporary Rule 15Ba2–6T under the Exchange Act (''Rule 15Ba2–6T''),[1] which provides for the temporary registration of municipal advisors under the Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] The Commission also adopted Subpart N (Forms for Registration of Municipal Advisors), which consisted of 17 CFR 249.1300T (Form MA–T—For temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration). On December 21, 2011, the Commission adopted an amendment to Rule 15Ba2–6T, which extended the date on which Rule 15Ba2–6T (and consequently Form MA–T) will sunset from December 31, 2011, to September 30, 2012.[3] The Commission did not make any other amendments to Rule 15Ba2–6T or Form MA–T. In the release extending the expiration date, the Commission inadvertently omitted the reference to Subpart N and 17 CFR 249.1300T in the ''Statutory Authority and Text of Rule and Amendments'' section. As such, Subpart N, which consists of 17 CFR 249.1300T, was deleted from the Code of Federal Regulations. The Commission is making this technical amendment to restore Subpart N and 249.1300T to Title 17 of the Code of Federal Regulations.

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Municipal advisors, Temporary registration requirements.

For the reasons set out above, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Subpart N, consisting of § 249.1300T, is added to read as follows:

Subpart N—Forms for Registration of Municipal Advisors

§ 249.1300T Form MA–T—For temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.

The form shall be used for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration pursuant to Section 15B of the Exchange Act, (15 U.S.C. 78*o*–4).

Note: The text of Form MA–T does not, and the amendments will not, appear in the Code of Federal Regulations.

Dated: July 12, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–17411 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 240.15Ba2–6T.

[2] *See* Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010).

[3] *See* Securities Exchange Act Release No. 66020 (December 21, 2011), 76 FR 80733 (December 27, 2011).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0313]

RIN 1625–AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations by adding four permanent safety zones within the Captain of the Port Detroit Zone. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in portions of the Captain of the Port Detroit Zone.

DATES: This final rule is effective on August 17, 2012.

ADDRESSES: Comments and material received from the public, are part of docket number USCG–2012–0313 and are available for inspection by any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil*. If you have questions on viewing material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 22, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone in the **Federal Register** (77 FR 30245). We did not receive any comments in response to the proposed

rule. No public meeting was requested and none was held.

Basis and Purpose

Currently, 33 CFR 165.941(a) permanently lists fifty-six permanent safety zones within the Captain of the Port Detroit Zone. Each of these fifty-six permanent safety zones corresponds to an annually recurring fireworks display. A recent survey within the Captain of the Port Detroit Zone revealed four additional recurring events that require, in the Captain of the Port's opinion, a safety zone because these events may present dangers to the boating public. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Three of these four additional fireworks displays occur within a single month each year. The other event, the Put-In-Bay Chamber of Commerce Fireworks, occurs four times a year; twice in June and twice in September. Each of these additional fireworks events typically occurs during the same week of its respective month, but the exact date and times of each of these events will be determined each year.

Background

To mitigate the dangers presented by these four recurring fireworks displays, the Captain of the Port Detroit has determined that establishing safety zones is necessary. Thus, the Coast Guard is amending 33 CFR 165.941 by adding four permanent safety zones. These safety zones will be enforced in the following locations and at the following times:

The safety zone for the Catawba Island Club Fireworks, Catawba Island, OH, will encompass all waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41–34′–18.10″ N, 082–51′–18.70″ W (NAD 83). This zone will be enforced one evening during the last week in May.

The safety zone for the Put-In-Bay Chamber of Commerce Fireworks, Put-In-Bay, OH, encompasses all the waters of Lake Erie within a 1000-foot radius of the fireworks launch site located at position 41–39′–19″ N, 082–48′–57″ W (NAD 83). This zone will be enforced one evening during the third week in June, one evening during the last week in June, one evening during the first week in September, and one evening during the second week in September.

The safety zone for the Bay Point Fireworks Display, Marblehead, OH, encompasses all the waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°30′29.23″ N, 082°43′8.45″ W (NAD 83). This zone will be enforced one evening during the first week in July.

The safety zone for the Marysville Days Fireworks, Marysville, MI, encompasses all waters of the St. Clair River bounded by the arc of a circle with a 600-foot radius with its center in approximate position 42°54′25″ N, 082°27′58″ W (NAD 83). This zone will be enforced one evening during the last week in June.

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones in this ruling will be enforced. Consistent with 33 CFR 165.7(a), such means of may include, among other things, publication in the **Federal Register**, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of a safety zone in this section is cancelled prematurely.

Entry into, transiting, or anchoring within each of these safety zones during a period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

Discussion of Comments and Changes

No comments were received and there are no changes to the rule as proposed by the NPRM published on May 22, 2012.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

2. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie and the Saint Clair River during the period that any of the proposed safety zones is being enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the above Regulatory Planning and Review section. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.941, add paragraphs (a)(56) through (59) to read as follows:

§ 165.941 Safety Zones; Annual Events in the Captain of the Port Detroit Zone.

(a) * * *

(56) Catawba Island Club Fireworks; Catawba Island, OH:

(i) *Location.* All waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41–34′–18.10″ N, 082–51′–18.70″ W (NAD 83).

(ii) *Expected date.* This safety zone will be enforced one evening during the last week in May.

(57) Put-In-Bay Chamber of Commerce Fireworks, Put-In-Bay, OH:

(i) *Location.* All waters of Lake Erie within a 1,000-foot radius of the fireworks launch site located at position 41–39′–19″ N, 082–48′–57″ W (NAD 83). This area is located in the Put-In-Bay Harbor.

(ii) *Expected dates.* This safety zone will be enforced one evening during the third week in June, one evening during the last week in June, one evening during the first week in September, and one evening during the second week in September.

(58) Bay Point Fireworks Display, Marblehead, OH:

(i) *Location.* All waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41–30′–29.23″ N, 082–43′–8.45″ W (NAD 83).

(ii) *Expected date.* This safety zone will be enforced one evening during the first week in July.

(59) Marysville Days Fireworks, Marysville, MI:

(i) *Location.* All waters of the St. Clair River within a 600 foot radius of the fireworks launch site located on land at position 42–54′–25″ N, 082–27′–58″ W (NAD 83).

(ii) *Expected date.* This safety zone will be enforced one evening during the last week in June.

Dated: July 6, 2012.

D.V. Smith,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2012–17409 Filed 7–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0563]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, Charles County, Newburg, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a safety zone upon specified waters of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located in the Potomac River at Newburg in Charles County, Maryland. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: This rule is effective from 8 p.m. on July 21, 2012, through 10:30 p.m. on July 22, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0563]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). The Coast Guard received the information about the event on May 23, 2012, and it would be impracticable to publish an NPRM and receive comments before the event commences.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable.

B. Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled event.

C. Discussion of the Final Rule

Digital Lightning, of Kensington, Maryland, will conduct a fireworks display launched from a barge located on the Potomac River, adjacent to Gilligan's Pier Restaurant, at Newburg in Charles County, Maryland scheduled on July 21, 2012 at approximately 9:45 p.m. If necessary, due to inclement weather, the fireworks display may be re-scheduled to take place on July 22, 2012 at approximately 9:45 p.m.

The Coast Guard is establishing a temporary safety zone on certain waters of the Potomac River, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 38°23′41″ N, longitude 076°59′30″ W, located at Newburg in Charles County, Maryland (NAD 1983). The temporary safety zone will be enforced from 8 p.m. through 10:30 p.m. on July 21, 2012 and, if necessary due to inclement weather, from 8 p.m. through 10:30 p.m. on July 22, 2012. The effect of this temporary safety zone will be to restrict navigation in the regulated area during, as well as the set up and take down of, the fireworks display. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Potomac River outside the safety zone. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving

Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this safety zone will restrict some vessel traffic, there is little vessel traffic associated with commercial fishing in the area, and recreational boating in the area can transit waters outside the safety zone. In addition, the effect of this rule will not be significant because the safety zone is of limited duration and limited size. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit, or anchor in a portion of the Potomac River, located at Newburg in Charles County, Maryland from 8 p.m. through 10:30 p.m. on July 21, 2012 and, if necessary due to inclement weather, from 8 p.m. through 10:30 p.m. on July 22, 2012. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size; this safety zone would be activated, and thus subject to enforcement, for only 2½ hours in the evening when vessel traffic is low; and vessel traffic could pass safely around the safety zone. In addition, before the activation of the zone, we will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the

docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0563 to read as follows:

§ 165.T05–0563 Safety Zone; Fireworks Display, Potomac River, Charles County, Newburg, MD.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Potomac River, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 38°23′41″ N, longitude 076°59′30″ W, located at Newburg in Charles County, Maryland (NAD 1983).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0563.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port Baltimore.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at 410–576–2693 or on VHF–FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions. Captain of the Port Baltimore* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 p.m. through 10:30 p.m. on July 21, 2012 and, if necessary due to inclement weather, from 8 p.m. through 10:30 p.m. on July 22, 2012.

Dated: July 3, 2012.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2012–17410 Filed 7–17–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2012–0495; FRL–9356–2]

Polychlorinated Biphenyls (PCBs); Disposition of Request Submitted Under TSCA Section 21

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reasons for Agency response.

SUMMARY: This document announces EPA's reasons for denying a request submitted by the Basel Action Network, the Sierra Club, and the Center for Biological Diversity (petitioners), requesting that EPA take certain actions to protect human health and the marine environment from polychlorinated biphenyls (PCBs) that leach from ships sunk through the U.S. Navy's sinking exercises (SINKEX) program. As noted in a letter dated July 10, 2012, EPA denied the request for rules under the Toxic Substances Control Act (TSCA). The reasons for the denial are discussed in this document. EPA will respond separately to the petitioners' request for revisions to the general permit for the transport of target vessels under SINKEX issued by EPA under the Marine Protection, Research, and Sanctuaries Act (MPRSA).

DATES: July 18, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Peter Gimlin, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; fax number: (202) 566–0473; email address: *gimlin.peter@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, distribute in commerce, use or dispose of PCBs. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access information about this action?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2012–0495. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are

processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. Overview

On April 11, 2012, EPA received a request from the Basel Action Network, the Sierra Club, and the Center for Biological Diversity (petitioners). The petitioners requested that EPA take certain actions to protect human health and the marine environment from PCBs that leach from ships sunk through the U.S. Navy's SINKEX program. The petitioners requested that EPA amend the existing general permit issued to the Navy under MPRSA (33 U.S.C. 1401 *et seq.*), or, in the alternative, enact rules under TSCA (15 U.S.C. 2601 *et seq.*). In requesting actions under TSCA, the petitioners have invoked the citizen petition provisions of section 21 of TSCA (15 U.S.C. 2620).

After careful consideration, EPA denied the request for TSCA rules by letter dated July 10, 2012. This document explains EPA's reasons for denying the request to initiate rulemakings under TSCA. EPA will respond separately to the petitioners' requests for revisions to the general permit for the transport of target vessels under SINKEX issued by EPA under MPRSA.

III. What is a TSCA section 21 Petition?

Under TSCA section 21, any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or the expiration of the 90-day period.

IV. What is the MPRSA?

In 1972, Congress enacted Title I of MPRSA, also referred to as the Ocean Dumping Act, because unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities. 33 U.S.C. 1401(a). MPRSA section 101(a) prohibits, unless authorized by permit, the (1) transportation from the United States of any material for the purpose of dumping it into ocean waters, and (2) in the case of a vessel or aircraft registered in the United States or flying the United States flag, or in the case of a United States department, agency, or instrumentality, transportation from any location, any material for the purpose of dumping it into ocean waters. 33 U.S.C. 1411(a). MPRSA section 101(b) also prohibits the unpermitted dumping of any material transported from a location outside of the United States into certain ocean waters of the United States. MPRSA section 3(f) defines the term ''dumping'' broadly (to mean ''a disposition of material'') but the term excludes, among other things, ''the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.'' 33 U.S.C. 1402(f).

Though MPRSA authorizes the U.S. Army Corps of Engineers to issue MPRSA permits (subject to EPA review and concurrence) with respect to dredged material, EPA has permit authority for all other materials. 33 U.S.C. 1412 and 1413.

V. What is SINKEX?

In 1977, EPA issued a general permit to the Navy for the transport of target vessels (SINKEX) under MPRSA section 102 (42 FR 2462, January 11, 1977). The permit authorizes the Navy to transport vessels from the United States or from any other location for the purpose of sinking such vessels in ocean waters in testing ordnance and providing related data subject to four conditions:

1. Such vessels may be sunk at times determined by the appropriate Navy official;

2. Necessary measures shall be taken to insure that the vessel sinks to the bottom rapidly and permanently, and that marine navigation is not otherwise impaired by the sunk vessel;

3. All such vessel sinkings shall be conducted in water at least 1,000 fathoms (6,000 feet) deep and at least 50 nautical miles from land [i.e., that portion of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, which is in closest proximity to the proposed disposal site]; and

4. Before sinking, appropriate measures shall be taken by qualified personnel at a Navy or other certified facility to remove to the maximum extent practicable all materials which may degrade the marine environment, including without limitation (i) emptying of all fuel tanks and fuel lines to the lowest point practicable, flushing of such tanks and lines with water, and again emptying such tanks and lines to the lowest point practicable so that such tanks and lines are essentially free of petroleum, and (ii) removing from the hulls other pollutants and all readily detachable material capable of creating debris or contributing to chemical pollution. 33 CFR 229.2(a).

The Navy also must make an annual report to EPA setting forth the name of each vessel used as a target vessel, its approximate tonnage, and the location and date of sinking. 33 CFR 229.2(b).

In 1989, the Navy identified the potential for viscous PCBs at levels of concern in wool felt used as acoustical damping material (on submarines) and as gasket material (on all vessels). The Navy promptly notified EPA and halted most SINKEXs pending further evaluation. In 1993, the Navy conducted a modeling study that predicted PCBs introduced to the deep benthic environment would have little chance of physical or biological transport to surface waters and that PCB sediment concentrations would pose no notable threat to benthic organisms. Other Navy studies had indicated that most of the PCBs introduced or to be introduced by the Navy through SINKEXs to the deep benthic environment would be solid materials and not readily leachable. In 1996, EPA and the Navy entered into an Agreement regarding the further course of study and continuing conduct of SINKEX activities using a finite number of vessels prepared according to the terms of the Agreement (Ref. 1).

In 1999, EPA signed a letter designed to clarify and specify, with regard to PCBs, the manner in which the Navy would proceed with SINKEX activities under the existing MPRSA general permit. At that time, EPA confirmed its belief that SINKEX operations could continue under the MPRSA general permit and its requirements, including as interpreted to impose specific requirements relating to materials containing PCBs. The terms and conditions of EPA's 1999 interpretation were accepted by the Navy as of August 2, 1999 (Ref. 2).

The 1999 EPA letter required that the Navy conduct specified studies and produce certain information to EPA. For the studies, the Navy was to complete a study involving monitoring the ex-USS *Agerholm,* including sample collection, assessment and analysis. The ex-USS *Agerholm* study included assessment and analyses of sediments, core samples, and fish tissue for PCBs, as well as toxicity and bioaccumulation

studies. The Navy also prepared analysis of the leach rate of PCBs (in the various materials likely to be present on target vessels) into sea water at the temperature and pressure present on a sunken vessel (i.e., representative of conditions authorized under the MPRSA general permit).

The 1999 letter explained EPA's interpretation of the general permit requirements to clarify and specify, with regard to PCBs, the manner in which the Navy could proceed with SINKEX activities (transport for the purposes of disposal into ocean waters) under the MPRSA general permit (40 CFR 229.2)). EPA explained that, under the MPRSA general permit:

> Before engaging in a SINKEX, the Navy must conduct an inventory of each SINKEX vessel to ascertain the presence of PCBs, and that the inventory and list of items removed prior to sinking must be provided to EPA in the annual report required under the general permit. Before sinking a SINKEX vessel, qualified personnel at a Navy or other approved facility must:
>
> a. Remove all transformers containing 3 pounds or more of dielectric fluid and all capacitors containing 3 pounds or more of dielectric fluid;
>
> b. Use all reasonable efforts to remove any capacitors and transformers containing less than 3 pounds of dielectric fluid from the vessel (reasonable efforts include, but are not necessarily limited to, the removal of capacitors from electrical and control panels by using hand tools such as wire or bolt cutters or a screw driver); and
>
> c. Drain and flush hydraulic equipment, heat transfer equipment, high/low pressure systems, cutting power machinery which uses cooling or cutting oil, and containers containing liquid PCBs at ≥50 ppm [parts per million].

EPA also explained its belief that it is often practicable to remove specified materials containing non-liquid PCBs before sinking a vessel. To the extent that removal is practicable, EPA explained that these non-liquid PCBs are required to be removed under the MPRSA general permit. However, when such objects cannot be practicably removed or their removal threatens the structural integrity of the vessels so as to impede the SINKEX, EPA recognized that the Navy could leave such items in place (e.g., felt materials that are bonded in bolted flanges or mounted under heavy equipment, certain paints and adhesives). EPA noted that objects may be considered not capable of practicable removal if equipment must be disassembled or removed for access to the objects, if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting or similar process, or if removal would endanger human safety or health even when conducted with protective equipment and reasonable safety measures.

Shortly after the 1999 letter, EPA made a determination under TSCA section 9(b) that the risks associated with PCBs on target vessels used in SINKEX could be eliminated or reduced to a sufficient extent by actions taken under MPRSA and that such risks should be addressed solely under MPRSA.

VI. Summary of the Request

On April 11, 2012, the Basel Action Network, the Sierra Club, and the Center for Biological Diversity requested that EPA take certain actions to protect human health and the marine environment from PCBs that leach from ships sunk through the U.S. Navy's SINKEX program (Ref. 3). The petitioners requested that EPA amend the existing general permit issued to the Navy under MPRSA or, in the alternative, enact rules under TSCA. Specifically, the submission asks EPA to:

1. Require all PCB-contaminated materials in concentrations of 50 ppm or greater to be removed from SINKEX vessels prior to sinking.

2. Require all PCB-contaminated materials in concentrations of <50 ppm to be removed from SINKEX vessels prior to sinking to the maximum extent practicable.

3. Require additional studies to determine whether PCB-contaminated materials in concentrations of <50 ppm constitute ''trace'' contaminants. The request states that such additional studies should include the most recent data on the toxicity, persistence, and bioaccumulation of PCBs and should include monitoring at multiple recent SINKEX sink sites. The request further states that studies should also assess the releases of other potentially hazardous pollutants into the marine environment from SINKEX ships including heavy metals, asbestos, and radioactive substances.

VII. Disposition of the Request for Rules Under TSCA

A. What was EPA's response?

In a letter dated July 10, 2012, EPA denied the petitioners' request to initiate rulemakings under TSCA (Ref. 4). A copy of the Agency's letter is available in the docket for this action. EPA's reasons for denying the request for TSCA rules are provided in Unit VII.B of this unit.

B. What were EPA's reasons for this denial?

1. *Requests for rules requiring removal of PCB-contaminated materials*—a. *PCBs on SINKEX vessels are regulated solely under the authority of MPRSA.* TSCA is not the appropriate vehicle for the regulation of PCBs on ships used in the Navy's SINKEX program, because the Administrator in 1999 determined under TSCA section 9(b) that such regulation should be under MPRSA, not TSCA. This section 9(b) determination is not subject to TSCA section 21. Section 21 of TSCA allows any person to petition ''to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607 of this title or an order under section 5(e) or 6(b)(2) of this title'' (15 U.S.C. 2620(a)), but not a determination under section 2608 (TSCA section 9).

Moreover, the petitioners have provided no basis to cause EPA to reconsider this determination. Section 9(b) of TSCA provides:

> The Administrator shall coordinate actions taken under [TSCA] with actions taken under other Federal laws administered by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under [TSCA].
>
> 15 U.S.C. 2610(b)

In 1999, the Administrator determined under TSCA section 9(b) that ''the risk to health or the environment attributable to the transportation and disposal of PCBs associated with SINKEX could be eliminated or reduced to a sufficient extent by actions taken under the authority of MPRSA.'' (Ref. 5). The Administrator further stated: ''I have not identified a public interest in the regulation under TSCA of the transportation and disposal of PCBs associated with SINKEX.'' (Ref. 5). Consequently, the Administrator determined that ''PCBs on SINKEX vessels should be regulated solely under [MPRSA], rather than under both MPRSA and TSCA.'' (Ref. 5).

The petitioners do not present any new information that would cause EPA to reconsider this determination. Although the petitioners present information that they believe calls into question the sufficiency of the current MPRSA general permit, they present no information indicating that any risks that may not be adequately addressed by the current permit could not be reduced to a sufficient extent by action taken

under the authority of MPRSA, or that the public interest would be served by regulation of SINKEX under TSCA in addition to regulation under MPRSA. The petitioners implicitly suggest that any such risk could be reduced to a sufficient extent under MPRSA by seeking amendment of the MPRSA general permit to impose precisely the conditions they ask EPA to impose under TSCA. In addition, given the existence of the MPRSA general permit and the history of regulation of SINKEX under MPRSA, EPA believes it is more efficient to continue to regulate SINKEX under the authorities of MPRSA, and not to also regulate SINKEX under TSCA.

EPA is evaluating the request to revise the MPRSA general permit and will respond shortly. As the Agency stated in issuing the TSCA section 9(b) determination, EPA ''is prepared to revise the Navy permit, or revoke it, in the event that the results of further studies demonstrate an unexpected unacceptable risk to human health or the environment from SINKEX.'' (Ref. 5).

b. *Petitioners have not shown that the requested PCB removal rules would be necessary.* The petitioners have not shown that a rule to require removal of PCB-contaminated materials in concentrations of ≥50 ppm would be necessary if EPA were to withdraw the TSCA section 9(b) determination, given that the export of ships under the SINKEX program containing PCBs in concentrations ≥50 ppm would be prohibited by existing TSCA regulations, absent rulemaking under TSCA section 6(e)(3) allowing the export. 40 CFR 761.97. The petitioners have not shown that a rule to require removal of PCB-contaminated materials in concentrations <50 ppm to the maximum extent practicable would be necessary, since the MPRSA general permit already does require removal of PCB-contaminated materials to the maximum extent practicable. 40 CFR 229.2(a)(4). In addition, the petitioners do not provide an assessment of risks specifically associated with PCBs in concentrations <50 ppm.

2. *Requests for rules requiring studies.* The petitioners request that the Agency issue a TSCA rule to require studies at multiple recent SINKEX sink sites to determine whether PCB-contaminated materials in concentrations of <50 ppm constitute ''trace'' contaminants, ''such that their dumping will not cause undesirable effects including the possibility of bioaccumulation.'' The petitioners' request is not entirely clear, but EPA interprets it as a request for monitoring of PCB concentrations in the vicinity of sunken SINKEX vessels to determine, based on the most recent data on the toxicity, persistence, and bioaccumulation of PCBs, whether materials on vessels with PCB concentrations of <50 ppm would constitute trace contaminants.

The petitioners do not attempt to conform their request to TSCA; they do not address the applicable TSCA section 4 findings.

For the Agency to issue a TSCA section 4 test rule to require testing on a chemical substance, the Agency must find the following:

- The chemical substance may present unreasonable risk of injury to health or the environment.
- There are insufficient data or experience upon which the effects of the chemical substance can reasonably be determined or predicted.
- Testing of the chemical substance is necessary to provide the missing data.

An alternative set of findings could support a section 4 rule as well:

- The chemical substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure.
- There are insufficient data or experience upon which the effects of the chemical substance can reasonably be determined or predicted.
- Testing of the chemical substance is necessary to provide the missing data.

The petitioners do not address these required statutory findings. Nor does the request provide a basis for EPA to make the findings. For example, the petitioners do not provide sufficient information to demonstrate that there are insufficient data or experience upon which the effects of the PCBs in question can reasonably be determined or predicted, or that the requested monitoring would be necessary to develop any such missing data. Among other things, the petitioners do not demonstrate that the monitoring they request would be an effective way to determine whether PCB-contaminated materials at concentration <50 ppm constitute trace contaminants. The petitioners offer no explanation of how PCBs detected in the vicinity of a sunken vessel could be correlated with PCB-contaminated materials on the ship at concentrations <50 ppm as opposed to materials on the ship with PCBs at concentrations >50 ppm. EPA is not prepared, based on the information provided in the request, to initiate a rulemaking under TSCA to require the requested monitoring.

Furthermore, testing requirements under TSCA section 4 can be imposed only upon manufacturers and processors of chemical substances. Manufacturing and processing of PCBs were, for the most part, banned by TSCA section 6(e) more than 30 years ago. Although some incidental manufacturing and processing of PCBs continues, EPA believes it makes more sense that monitoring for PCBs in connection with SINKEX, if any is necessary, fall under the authority of MPRSA rather than TSCA, particularly given the connection between the ocean dumping activity authorized under the MPRSA general permit for SINKEX and the PCB monitoring requested. This approach is reinforced by the TSCA section 9(b) determination and is consistent with the TSCA section 9(b) provision requiring the Administrator to ''coordinate actions taken under [TSCA] with actions taken under other Federal laws administered in whole or in part by the Administrator.''

The petitioners' request regarding studies relating to ''other potentially hazardous pollutants'' such as heavy metals, asbestos, and radioactive substances is similarly unsupported in the submission. The petitioners do not attempt to conform the request to TSCA section 4. In addition, the petitioners do not even identify (other than asbestos) the chemical substances or mixtures that they would like tested.

For these reasons, EPA denied the request for TSCA rules.

VIII. References

The following is a list of the documents that are specifically referenced in this document and placed in the docket that was established under docket ID number EPA–HQ–OPPT–2012–0495. For information on accessing the docket, refer to Unit I.B. of this document.

1. ''Agreement between the Department of the Navy and the United States Environmental Protection Agency, Washington, DC'', August 19, 1996.
2. August 2, 1999, letter from EPA Office of Wetlands, Oceans, and Watersheds Director Robert Wayland to Deputy Assistant Secretary of the Navy Elsie Munsell.
3. Basel Action Network, Sierra Club, and the Center for Biological Diversity. ''U.S. Navy Ocean Dumping Program; Petition to EPA to Protect Human Health and the Environment from Unreasonable Risks Associated with the Navy's Sinking Exercise Program (SINKEX),'' (April 2012).
4. July 10, 2012, letter from EPA Office of Chemical Safety and Pollution Prevention's Acting Assistant Administrator Jim Jones to the Basel

Action Network, the Sierra Club, and the Center for Biological Diversity.

5. September 13, 1999, letter from EPA Administrator Carol M. Browner to the Honorable Richard Danzig, and enclosure (Decision Memorandum—EPA regulation of PCBs on Vessels Used for Navy Sinking Exercise).

List of Subjects

Environmental protection, Polychlorinated biphenyls, SINKEX.

Dated: July 10, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–17381 Filed 7–17–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 12–74]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (the Bureau) maintains support on a limited, interim, fiscally responsible basis for specific Rural Health Care Pilot Program participants that have exhausted their funding this year or will exhaust such funding during funding year 2012 to ensure that they can continue to benefit from access to these Pilot Program-funded broadband networks, while the Commission considers potential reforms to transition recipients of Pilot funding to a longer-term mechanism for supporting broadband services delivered to rural HCPs. This interim support will preserve transitioning Pilot Program participants' connectivity and the resulting health care benefits that patients receive from those investments made by the Commission in health care broadband networks.

DATES: Effective July 18, 2012.

FOR FURTHER INFORMATION CONTACT: Linda Oliver, Wireline Competition Bureau at (202) 418–1732 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in WC Docket No. 02–60; FCC 12–74, adopted July 5, 2012 and released July 6, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.*

I. Introduction

1. In this order, we maintain support on a limited, interim, fiscally responsible basis for specific Rural Health Care Pilot Program (Pilot Program) participants that have exhausted their funding this year or will exhaust such funding during funding year 2012. We will provide continued support for the recurring costs of broadband services provided to those health care provider (HCP) sites to ensure that they can continue to benefit from access to these Pilot Program-funded broadband networks, while we consider potential reforms to transition recipients of Pilot funding to a longer-term mechanism for supporting broadband services delivered to rural HCPs. This interim support will preserve transitioning Pilot Program participants' connectivity and the resulting health care benefits that patients receive from those investments made by the Commission in health care broadband networks. Today's action stays within the budget of the Pilot Program and will therefore not impact overall demand for the universal service fund (USF or Fund).

II. Discussion

2. The USF Rural Health Care support mechanism consists of the ''Primary'' program and the ''Pilot'' program. The Commission created the Pilot Program in 2006 in an effort to examine ways to use the RHC support mechanism to enhance public and non-profit HCPs' access to advanced telecommunications and information services. Participants in the Pilot Program are eligible to receive universal service funding to support up to 85 percent of the cost of construction of state or regional broadband health care networks and of the cost of advanced telecommunications and information services provided over those networks. Through the Pilot Program, projects have created health broadband networks that consist of multiple interconnected HCPs, often in a hub-and-spoke configuration, that typically connect rural HCPs to larger, more urban medical centers. The networks created by these projects enable rural HCPs to access medical specialists, technical expertise, and other resources that are usually found only within the larger HCPs on the network.

3. Approximately 13 out of the 50 active projects have some individual HCPs that have spent all of the money allocated to them, or are scheduled to do so during funding year 2012. According to the Universal Service Administrative Company (USAC), some HCPs may exhaust their funding in the last few months of Funding Year 2011, and an estimated 484 HCPs (or 22.5 percent of individual HCP sites participating in the Rural Health Care Pilot projects) are expected to exhaust their allocated funding before or during funding year 2012.

4. Through this order, we provide funds to support ongoing connectivity to Pilot Program HCPs that will exhaust funding allocated to them before or during funding year 2012. Such funding is necessary to ''bridge'' their participation in the Pilot Program and their participation in any reformed Rural Health Care programs under consideration. Accordingly, as discussed below, we direct USAC to provide continued support to Pilot projects for up to 85 percent of eligible recurring costs for those individual HCP sites on their networks that will exhaust their funding on or before June 30, 2013, including those that will have exhausted their funding before the effective date of this order. Bridge funding will maintain support for this limited number of HCPs and in doing so help ensure that they will remain connected to the broadband networks developed with Pilot Program funding, while providing the Commission additional time to consider how best to transition Pilot Program participants to permanent Rural Health Care funding programs. Thus, this support will help maintain the *status quo* for the many patients and communities that benefit from the telemedicine and other telehealth applications made available by the Pilot projects during this transition period. Consistent with this objective, the support is limited in time and scope and does not provide new funds for Pilot projects to expand their networks.

5. This bridge funding will not increase the demand on the Fund relative to what was already designated for Pilot Program projects. Accordingly, we direct USAC to use up to $15 million of the Pilot Program funds that were previously set aside for projects that either withdrew from the Program or otherwise failed to meet program deadlines to provide bridge funding to transitioning Pilot project participants. These funds were designated for Funding Year 2009 and have already

been collected. Thus, there will be no effect on Fund demand for the next year as a result of our action today.

6. We are mindful that if we do not provide bridge funding, Pilot project participants that will exhaust their support under the Pilot Program could be required to ''transition'' twice, within a relatively short time period, to different RHC programs—the Primary Program and, potentially, any programs that may ultimately be adopted by the Commission in the pending Rural Health care rulemaking. As discussed above, there are significant differences between the Pilot Program and the Primary Program, and the Commission is still considering how best to reform the existing program consistent with our overarching goals to promote access to broadband for health care providers. Almost every commenter responding to the *Bridge Public Notice,* 77 FR 14364, March 9, 2012, supports the provision of ''bridge'' funding for funding year 2012. These commenters state that without an orderly transition, many of the individual HCP sites are at risk of discontinuing participation in their respective networks. For example, the Palmetto State Providers Network (PSPN) states that its individual members, especially in rural locations, ''often do not have the resources or time to navigate the RHC Primary program process'' and that allowing the RHC Pilot networks to continue to bill and operate as a consortium would be more administratively efficient. PSPN, a statewide backbone network that connects rural and underserved areas in South Carolina, notes that uncertainty regarding the transition of HCPs from the Pilot Program has caused some of its HCPs to consider discontinuing their participation despite the demonstrated benefits of the network. Similarly, the two Colorado Pilot projects, Rocky Mountain HealthNet and Colorado Health Care Connections state that ''the value developed under the Pilot Program would be placed at risk if certain Pilot projects have to face the significant difficulties of temporarily transitioning to the existing Primary Program.'' Geisinger Health Systems also states that ending Pilot Program support for HCPs on its network, without providing a process to transition them into a permanent RHC support mechanism, may cause some members of its network to drop out.

7. *Duration of Bridge Funding.* We provide support only through the end of funding year 2012 (through June 30, 2013). The two Colorado pilot projects suggest that the Commission extend bridge funding beyond funding year 2012, until a permanent rural health care program is established and participants are able to complete the application and award process. Geisinger suggests that the Commission should continue to provide support through the Pilot Program until all rural and underserved areas have the same connectivity opportunities as urban areas. We intend bridge funding to be a temporary measure, and we expect to issue an Order on reform of the permanent rural health care mechanism by the end of this year, which will make additional bridge funding unnecessary. We therefore decline to grant these requests.

8. *Service Substitutions.* HCPs that will exhaust funding allocated to them before or during year 2012 may use bridge funding support for service substitutions. The Pilot Program has demonstrated that service substitutions allow HCPs to manage their networks efficiently, and have the effect of decreasing overall demand on the Fund. USAC notes that over time Pilot projects have requested three types of service substitutions: (1) Upgrading to fiber when it becomes available through the project's services provider; (2) increasing the bandwidth of an HCP on their network; and (3) disconnecting service to a participating HCP site. Bridge funding can be used for recurring and non-recurring charges, such as installation charges, associated with service substitutions that will allow participating sites to upgrade or downgrade their existing circuits. Bridge funding may not be used to add new circuits to a site, unless adding or replacing a circuit is necessary to complete a service substitution for an existing circuit or service. Allowing HCPs the ability to substitute their existing service with more or less bandwidth will ensure that their connectivity needs are being met, allowing them to increase or decrease bandwidth on existing circuits depending on their assessment of their own healthcare-related needs, and will help ensure that the Fund is used efficiently.

9. *Non-recurring Charges.* Bridge funding cannot be used for any non-recurring costs other than those associated with service substitutions. The limited purpose of this interim funding is to maintain Pilot project HCP connectivity while we consider how best to transition the projects to a long-term funding program, not to fund additional construction or network expansion during this time. We note that no commenters suggested that funding for non-recurring charges (other than for service substitutions) is necessary to maintain the individual HCP sites on the Pilot project networks during this period.

10. *Site Substitutions.* Bridge funding may only be used to support eligible HCP sites that participated in the Pilot Program at a specified location before June 30, 2012. Projects cannot use bridge funding to substitute sites or add new sites to their network, or to fund existing sites that move to a new location after June 30, 2012. However, Pilot project HCP sites that have exhausted their funding before the effective date of this order may use bridge funding to ''reconnect'' sites that participated in the Pilot Program at a specified location during funding year 2011. As discussed above, the purpose of this funding is to maintain the *status quo* and to avoid unnecessary churn for the Pilot projects, and we decline to provide funds to enable Pilot projects to expand or modify their networks.

11. *Process for Obtaining Bridge Funding.* Pilot Program participants eligible to receive bridge funding must submit a new FCC Form 466—A package for all eligible funding requests by March 30, 2013. Invoices of actual incurred eligible expenses must be submitted to USAC by December 31, 2013. These measures will help ensure that bridge funding is efficiently managed, and will protect against potential waste, fraud, and abuse. HCPs currently receiving support for services eligible for bridge funding do not have to re-file an FCC Form 465 to continue receiving support in funding year 2012, as long as the contract under which those services are provided is valid until June 30, 2013. Because HCPs have already gone through the competitive bidding process to identify and select the most cost-effective service provider in instituting these contracts, sufficient safeguards are in place to protect against waste, fraud, and abuse, without requiring HCPs to conduct a competitive bidding process again. However, in instances where the contract for eligible services ends before or during funding year 2012, or is not an ''evergreen'' contract that is valid until June 30, 2013, HCPs seeking bridge funding must complete the competitive bidding process and submit a Form 465 to seek additional funding for the period of time not covered by their existing contract. We find that requiring these HCPs to complete the competitive bidding process is consistent with Pilot Program procedures, will help protect against waste, fraud, and abuse, and will help ensure that HCPs will choose the most cost-effective alternatives.

12. *Reporting Requirements.* USAC should allocate and account for bridge funding as part of the last funding year

of the Pilot Program (funding year 2009) in its reports to the Commission. The overall award for those Pilot projects receiving bridge funding will be amended to reflect the original amount awarded to the projects plus any bridge funding received.

13. *Program Rules.* Except as otherwise discussed in this order, all rules regarding the Pilot Program remain in effect and are applicable to any bridge funding received by Pilot Program participants.

14. *Effective Date.* We find good cause to make this order effective upon publication in the **Federal Register** rather than 30 days after publication. Some Pilot project HCPs may exhaust all of the funding allocated to them in the last few months of Funding Year 2011. As a result, until this order becomes effective, these projects may be required by their service providers to pay the entirety of their recurring services charges until they are able to receive RHC support again, which could create hardship for some. Moreover, it takes approximately four weeks for USAC to process and send funding commitment letters to projects, which allows the projects to receive discounted rates from service providers. Requiring projects to wait an additional 30 days after publication in the **Federal Register** to file requests for funding commitment letters will only result in further delay, as many projects will be ready to request funding from USAC as soon as this order is released. Accordingly, we find that there is good cause to make this order effective immediately upon publication in the **Federal Register**, in order to eliminate a potential gap in RHC support and to preserve connectivity that has been developed under the Pilot Program.

III. Procedural Matters

A. Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. In this order, we maintain support on an interim basis for Pilot Program participants that will exhaust funding allocated to them before or during funding year 2012 (July 1, 2012–June 30, 2013). The order does not significantly modify the rules of the Pilot Program to create any additional burden on small entities, imposes no new burden on any company, and has no negative economic impact on any company.

17. Accordingly, we certify that the measures taken herein will not have a significant impact on a substantial number of small entities. The Commission will send a copy of this Public Notice, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, this document (or a summary thereof) and certification will be published in the **Federal Register.**

B. Paperwork Reduction Act Analysis

18. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

19. The Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

20. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 254, and 403, this order *is adopted, and shall become effective* July 18, 2012, pursuant to 5 U.S.C. 553(d)(3) and §§ 1.4(b)(1), 1.103(a), and 1.427(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), 1.427(a).

21. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–17478 Filed 7–17–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–210; DA 12–430]

Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, Order (*Order*). This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirement.

DATES: 47 CFR 64.610(f)(2), published at 76 FR 26641, May 9, 2011, and modified at 77 FR 20553, April 5, 2012, is effective July 18, 2012.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2075, or email *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 11, 2012, OMB approved, for a period of three years, the modified information collection requirements contained in the Commission's *Order,* DA 12–430, published at 77 FR 20553, April 5, 2012. The OMB Control Number is 3060–1146. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1146, in your

correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on July 11, 2012, for the modified information collection requirement contained in the Commission's rules at 47 CFR 64.610(f)(2).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1146.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1146.

OMB Approval Date: July 11, 2012.

OMB Expiration Date: July 31, 2015.

Title: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents and Responses: 106 respondents; 989 responses.

Estimated Time per Response: 1 to 120 hours.

Frequency of Response: Annual, on occasion, one-time, monthly, and semi-annually reporting requirements; Record keeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collections is contained in 47 U.S.C. 154, 254(k); sections 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620.

Total Annual Burden: 21,465 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information (PII), which is covered under the FCC's system of records notice (SORN), FCC/CGB–3, ''National Deaf-Blind Equipment distribution Program.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–3 ''National Deaf-Blind Equipment Distribution Program,'' in the **Federal Register** on January 19, 2012 (77 FR 2721) which became effective on February 28, 2012. Also, the Commission is in the process of preparing the new privacy impact assessment (PIA) related to the PII covered by these information collections, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN and is in the process of preparing a new SORN to cover the PII collected related thereto, as stated above.

Needs and Uses: On April 6, 2011, in document FCC 11–56, the Commission released a *Report and Order;* published at 76 FR 26641, May 9, 2011, adopting final rules to implement section 719 of the Communications Act of 1934 (the Act), as amended, which was added to the Act by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). *See* Public Law 111–260, § 105. Section 719 of the Act authorizes up to $10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) to support eligible programs that distribute equipment designed to make telecommunications service, Internet access service, and advanced communications accessible by low-income individuals who are deaf-blind. Specifically, the rules adopted in document FCC 11–56 established the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program for two years with an option to extend the program for one additional year. The rules adopted in document FCC 11–56 have the following information collection requirements:

(a) State equipment distribution programs, other public programs, and private entities may submit applications for NDBEDP certification to the Commission. For each state, the Commission will certify a single program as the sole authorized entity to participate in the NDBEDP and receive reimbursement from the TRS Fund.

(b) Each program certified under the NDBEDP must submit certain program-related data electronically to the Commission, as instructed by the NDBEDP Administrator, every six months, commencing with the start of the pilot program.

(c) Each program certified under the NDBEDP must retain all records associated with the distribution of equipment and provision of related services under the NDBEDP for two years following the termination of the pilot program.

(d) Each program certified under the NDBEDP must obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind.

(e) Each program certified under the NDBEDP must obtain verification that NDBEDP applicants meet the income eligibility requirements.

(f) Programs certified under the NDBEDP shall be reimbursed for the cost of equipment that has been distributed to eligible individuals and authorized related services, up to the state's funding allotment under this program. Within 30 days after the end of each six-month period of the Fund Year, each program certified under the NDBEDP pilot must submit documentation that supports its claim for reimbursement of the reasonable costs of equipment and related services.

On March 20, 2012 in document DA 12–430, the Commission released an *Order;* published at 77 FR 20553, April 5, 2012, to conditionally waive the requirement in section (f), above, for NDBEDP certified programs to submit reimbursement claims at the end of each six-month period of the TRS Fund Year to permit certified programs to submit reimbursement claims as frequently as monthly. Each certified program that wishes to take advantage of this waiver will be permitted to elect a monthly or quarterly reimbursement schedule, must notify the TRS Fund Administrator of its election at the start of each Fund Year, and must maintain that schedule for the duration of the Year.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–17346 Filed 7–17–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120118050–2206–02]

RIN 0648–BB49

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry and State Exemption Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The amendments eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and clarify and update various provisions of the rule.

DATES: This final rule is effective August 17, 2012.

ADDRESSES: Copies of the Regulatory Impact Review/Regulatory Flexibility Act Analysis are available from: Gordon Colvin, Office of Science and Technology, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Background information and documents are available at the NMFS Office of Science and Technology Web site at *http://www.st.nmfs.noaa.gov/mrip/*. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted in writing to Gordon Colvin, Office of Science and Technology, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 and to OMB by email to *OIRA Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: 301–427–8118; fax: 301–713–1875; or email: *gordon.colvin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/index.html.* Background information and documents are available at the NMFS Office of Science and Technology Web site at *http://www.countmyfish.noaa.gov/index.html.*

Background

The action amends regulations at 50 CFR 600.1400 that implement the National Saltwater Angler Registry and State Exemption Program (NSAR). The rule established the requirements and procedures for anglers, spear fishers and for-hire fishing vessels to register with NMFS unless exempt from the registration requirement. The NSAR regulations also established the requirements and procedures whereby states may be designated as Exempted States. The anglers and for-hire fishing vessels licensed or registered by Exempted States, and those anglers and vessels that are not required to be licensed or registered under the laws of such states, are not required to register with NMFS.

Based on its experience with administering NSAR and input from states, NMFS has determined that minor revisions to the rule are needed to clarify and update certain provisions in order to address the following objectives: (1) Eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; (2) allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; (3) allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and (4) clarify and update various provisions of the rule.

The proposed changes were explained in the preamble to the proposed rule.

Comments and Responses

On February 6, 2012, NMFS published a notice of the proposed rule (77 FR 5751). The public comment period ended on April 6, 2012. NMFS received thirteen comments on the proposed rule, including one from a state, one from a regional fishery management council, one from a non-governmental organization and ten from individuals. The comments and responses are summarized below.

- *General comment:* One non-governmental organization commented generally in support of the proposed revisions to §§ 600.1400, 600.1405, 600.1416 and 600.1417 that were not otherwise addressed in the organization's specific comments.

Response: NMFS acknowledges the comment.

- *Section 600.1405(b)(7):* NMFS proposed to clarify that the exception to the NSAR registration requirement for licensed commercial fishing vessels is only for commercial fishing and not for for-hire fishing.

Comment: The Western Pacific Fishery Management Council opposed this proposal and requested that the exemption from registration also apply to for-hire fishing vessels licensed by the State of Hawaii. The comment noted that the State of Hawaii issues a single license, the ''Commercial Marine License'' (CML), for both commercial fishing and for-hire vessels. Because the license is named a ''commercial'' marine license, the holders are not currently required to register with NMFS under the commercial license exception in § 600.1405(b)(7), even when they are operating as for-hire fishing vessels otherwise required to register under § 600.1405(a). The Council believes that requiring Hawaii-licensed for-hire vessels to be federally registered is unnecessary and duplicative, given the requirement for all holders of CML's to report trips and catch.

Response: All states, except Hawaii, are designated as Exempted States and have entered into Memoranda of Agreement to provide the necessary data to NMFS regarding their for-hire fisheries. Only Hawaii would be affected by the proposed rule change. All vessels that hold the Hawaii ''Commercial Marine License,'' including for-hire vessels, are required to complete and submit trip reports to the state. Because Hawaii already collects for-hire catch data from the trip reports and submits the data to NMFS, it is not necessary at the present time to compile a separate list or registry of for-hire vessels for sampling purposes. Therefore, NMFS agrees that this proposed amendment is not necessary now and will defer its adoption for future consideration.

- *Section 600.1405(b)(8):* NMFS proposed to provide that holders of Main Hawaiian Islands (MHI) Non-

commercial Bottomfish Permits do not need to register under NSAR.

Comments: Eight individuals and one Regional Fishery Management Council commented in support of this amendment.

Response: NMFS acknowledges the comments.

• *Section 600.1416(a):* NMFS proposed to clarify the existing requirement that lists of licensed anglers/registrants submitted by Exempted States need to be updated at least annually.

Comment: A state requested further information regarding what qualifies as acceptable annual updating.

Response: Guidance regarding the acceptable form, procedure and timing of annual updates was not included in the proposed rule. Annual updates are addressed in the Memoranda of Agreement with each exempted state. Adding such guidance to the rule would require development of draft guidelines and opportunity for public comment as a notice of revised or proposed rulemaking. NMFS does not believe it is necessary or desirable to develop such guidance via rulemaking at this time. It is not feasible to anticipate all of the many ways in which states may choose to conduct updates. If NMFS includes an incomplete or incorrect description of accepted methods in the rule, flexibility to allow for different or innovative methods in the future would be unnecessarily limited. NMFS will respond to requests from any state individually regarding the form, procedure and timing of annual updates.

• *Section 600.1416(d):* NMFS proposed to provide an extra year for states that need to enact legislation to remain qualified for Exempted State designation.

Comments: One non-governmental organization noted this revision as ''concerning''due to the potential for delay in the capability of MRIP to function at full capacity in 2013 as a result of any delay in providing a complete state angler database.

Response: Via MRIP, NMFS is developing, testing and implementing a series of improvements to the design and management of survey and estimation methods used to produce marine recreational fisheries statistics, including estimates of catch and effort. The improvements will address the recommendations of the National Research Council's 2006 *Review of Recreational Fisheries Survey Methods* and the requirements of Section 401(g) of the MSA. As new and improved survey and estimation methods are developed through MRIP and approved by NMFS, they will be implemented sequentially. Accordingly, there is no single date for implementation of MRIP. Rather, survey and estimation improvements will be phased in over time as they are developed and approved for implementation.

The submission of angler registry data by states supports one of the many components of MRIP, the creation of a list of anglers to be surveyed as part of the survey to develop statistics regarding angler effort, including fishing trip data, for the Atlantic and Gulf states and Puerto Rico. The current MRIP timetable for implementing system-wide changes to these effort surveys provides for continued pilot testing of effort sampling designs that use both angler registries and other lists for persons to be sampled, including postal address and telephone directory lists, into 2013. Not until these current pilot projects are complete, in late 2013 or later, will NMFS determine what specific sampling design to use in MRIP effort surveys on the Atlantic and Gulf coasts, beginning in 2014 or later. An additional year to provide updated registry information will extend into 2013. This would allow the states to provide complete registry data by 2014, the earliest time by which the new effort survey designs will be in use for the Atlantic and Gulf coasts.

Comment: A state commented in support of this proposal and further recommended that it be extended to other administrative or legal actions a state is required to complete to retain its eligibility for exempted state designation.

Response: NMFS recognizes that some state agencies that issue fishing licenses may require additional time to formalize Memoranda of Agreement or other agreements with other state agencies to enable the sharing of data about state license holders. Accordingly, NMFS has modified the rule to include the completion of formal agreements between state agencies as another basis for a one year extension of time under § 600.1416(d) of the rules.The additional year will not affect the timing for initiating use of the new MRIP effort survey designs for the Atlantic and Gulf coasts for the same reasons as stated in the response to the previous comment.

• *Section 600.1416(d)(1):* NMFS proposed to allow states that do not require persons who were born before June 1, 1940, to be licensed or registered to qualify for Exempted State designations if the state can demonstrate that the number of anglers so excluded is so small that exclusion of this group from a sample will not bias survey results.

Comment: One state requested that the rule clarify what proof will be required to demonstrate that exclusion of a group from a sample will not bias survey results.

Response: NMFS can provide case specific advice to states based on their specific circumstances. Such advice need not be incorporated in the rule. Adopting such guidance in the rule would require supplemental rulemaking to develop and secure public comment on undesirable limits to its flexibility.

• *Section 600.1417(b):* NMFS proposed to separate the U.S. Virgin Islands (USVI) and Puerto Rico into separate regions for purposes of submission of regional surveys of recreational fishing catch.

Comments: One individual recommended that a similar amendment be included in the rule for the three western Pacific Territories/ Commonwealths, separating Guam, American Samoa and the Commonwealth of the Northern Mariana Islands into three separate regions.

Response: NMFS proposed to separate the Caribbean region into two separate regions because it is expected that a survey design for the USVI will differ significantly from a survey design for Puerto Rico. Therefore, neither the USVI nor Puerto Rico would qualify for a single, regional survey-based exemption pursuant to § 417(b). NMFS did not propose to separate Guam, American Samoa and the Commonwealth of the Northern Marianas Islands into three separate regions in the notice of proposed rulemaking because all three are covered by a single survey design as part of the WPacFIN Regional Survey. Each of the three has executed a MOA with NMFS and is designated as an exempted state. NMFS will reconsider this comment in a future rulemaking if the WPacFIN-based regional survey no longer supports registry exemptions for the partners.

Changes From the Proposed Rule

In response to public comment, NMFS made the following changes in the final rule:

In § 600.1405(b)(7) NMFS is not adopting the proposed amendment to clarify that the exception to the NSAR registration requirement for licensed commercial fishing vessels is only for commercial fishing and not for for-hire fishing.

In § 600.1416(d), NMFS modified the rule to allow a one-year extension of time for the completion of formal agreements between state agencies.

In addition to the changes made in response to public comment as described above, NMFS made one

additional change in the final rule. In § 600.1416(b)(7), the words ''or registration'' are added for consistency with other references to state licenses and registrations.

Classification

NMFS has determined that the rule is consistent with the applicable provisions of the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none has been prepared.

This final rule modifies a collection-of-information subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0578. Public reporting burden for angler registration is estimated to average three minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Statistics.

Dated: July 12, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 600 to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1881.

■ 2. Section 600.1400 is revised to read as follows:

§ 600.1400 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in § 600.10.

Anadromous species means the following:

American shad: *Alosa sapidissima*
Blueback herring: *Alosa aestivalus*
Alewife: *Alosa pseudoharengus*
Hickory shad: *Alosa mediocris*
Alabama shad: *Alosa alabamae*
Striped bass: *Morone saxatilis*
Rainbow smelt: *Osmerus mordax*
Atlantic salmon: *Salmo salar*
Chinook, or king, salmon: *Oncorhynchus tshawytscha*
Coho, or silver, salmon: *Oncorhynchus kisutch*
Pink salmon: *Oncorhynchus gorbuscha*
Sockeye salmon: *Oncorhynchus nerka*
Chum salmon: *Oncorhynchus keta*
Steelhead: *Oncorhynchus mykiss*
Coastal cutthroat trout: *Oncorhynchus clarki clarki*
Eulachon or candlefish: *Thaleichthys pacificus*
Dolly varden: *Salvelinus malma*
Sheefish or inconnu: *Stenodus leucichthys*
Atlantic sturgeon: *Acipenser oxyrhynchus oxyrhynchus*
Shortnose sturgeon: *Acipenser brevirostrum*
Gulf sturgeon: *Acipenser oxyrhynchus desotoi*
White sturgeon: *Acipenser transmontanus*
Green sturgeon: *Acipenser medirostris*

Angler means a person who is angling (see 50 CFR 600.10) in tidal waters.

Authorized officer has the same meaning as in 50 CFR 600.10.

Combination license means either:

(1) A single state fishing license that permits fishing in fresh waters and tidal waters at one price; or

(2) A single state license that permits a group of fishing and hunting activities, including fishing in tidal waters, at a price that is less than the sum of the cost of the individual licenses.

Commercial fishing has the same meaning as in 16 U.S.C. 1802.

Continental shelf fishery resources has the same meaning as in 16 U.S.C. 1802.

Exempted state means a state that has been designated as an exempted state by NMFS pursuant to § 600.1415.

For-hire fishing vessel means a vessel on which passengers are carried to engage in angling or spear fishing, from whom a consideration is contributed as a condition of such carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel.

Indigenous people means persons who are documented members of a federally recognized tribe or Alaskan Native Corporation or persons who reside in the western Pacific who are descended from the aboriginal people indigenous to the region who conducted commercial or subsistence fishing using traditional fishing methods, including angling.

Spearfishing means fishing for, attempting to fish for, catching or attempting to catch fish in tidal waters by any person with a spear or a powerhead (see 50 CFR 600.10).

State has the same meaning as in 16 U.S.C. 1802.

Tidal waters means waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

■ 3. In § 600.1405, revise paragraphs (b)(4), and (b)(8) to read as follows:

§ 600.1405 Angler registration.

* * * * *

(b) * * *

(4) Holds a permit issued by NMFS for for-hire fishing under 50 CFR 622.4(a)(1), 635.4(b), 648.4(a), or 660.707(a)(1);

* * * * *

(8) Holds an HMS Angling permit under 50 CFR 635.4(c) or a MHI Non-commercial Bottomfish permit under 50 CFR 665.203(a)(2);

* * * * *

■ 4. In § 600.1416:

■ a. Revise paragraphs (a), (b)(1), (c), (d) introductory text, and (d)(1); and
■ b. Add paragraph (b)(7) to read as follows:

§ 600.1416 Requirements for exempted state designation based on submission of state license holder data.

(a) A state must annually update and submit to NMFS, in a format consistent with NMFS guidelines, the name, address and, to the extent available in the state's database, telephone number and date of birth, of all persons and for-hire vessel operators, and the name and state registration number or U.S. Coast Guard documentation number of for-hire vessels that are licensed to fish, or are registered as fishing, in the EEZ, in the tidal waters of the state, or for anadromous species. The Memorandum of Agreement developed in accordance with § 600.1415(b)(2) will specify the timetable for a state to compile and submit complete information telephone numbers and dates of birth for its license holders/registrants. The waters of the state for which such license-holder data must be submitted will be specified in the Memorandum of Agreement.

* * * * *

(b) * * *

(1) Under 17 years of age;

* * * * *

(7) Fishing on days designated as ''free fishing days'' by states. ''*Free fishing days''* means fishing promotion programs by which states allow new anglers to fish for a specified day without a license or registration.

(c) Unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample, a state may not be designated as an exempted state if its licensing or registration program excludes anglers in any category other than those listed in paragraph (b) of this section.

(d) Required enhancements to exempted state license-holder data. An exempted state must submit the following angler identification data by Jan. 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later, and thereafter in accordance with the Memorandum of Agreement. States that provide NMFS with notice that they are required to enact legislation or to enter into formal memoranda of agreement or contracts with other state agencies to comply with this requirement must submit the data within three years of the effective date of the Memorandum of Agreement:

(1) Name, address and telephone number, updated annually, of excluded anglers over age 59, unless the state can demonstrate that the number of anglers excluded from the license or registration requirement based on having a date of birth before June 1, 1940 is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample;

* * * * *

■ 5. In § 600.1417, revise paragraphs (b)(1)(iii) through (vii), and (b)(3), and add paragraph (b)(1)(viii) to read as follows:

§ 600.1417 Requirements for exempted state designation based on submission of recreational survey data.

* * * * *

(b) * * *

(1) * * *

(iii) Puerto Rico;

(iv) U.S. Virgin Islands;

(v) California, Oregon and Washington;

(vi) Alaska;

(vii) Hawaii; or

(viii) American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

* * * * *

(3) Utilize angler registry data to identify individuals to be surveyed by telephone, mail or Internet if such regional survey includes a telephone survey component; and

* * * * *

[FR Doc. 2012–17490 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120409403–2218–02]

RIN 0648–BB93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment Supplement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental final rule.

SUMMARY: NMFS issues this final rule to supplement the regulations implementing the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) for the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). The Comprehensive ACL Amendment specified, in part, annual catch limits (ACLs) and accountability measures (AMs) for species in the Snapper-Grouper FMP. A final rule implementing the Comprehensive ACL Amendment published on March 16, 2012, and became effective on April 16, 2012. However, after publishing that final rule, NMFS discovered that the commercial quota (ACL) for greater amberjack, which was specified in the Comprehensive ACL Amendment, was inadvertently not specified in the proposed or final rules to implement that amendment. The intent of this supplemental final rule is to implement the commercial ACL for greater amberjack, while maintaining catch levels consistent with achieving optimum yield for the resource.

DATES: This rule is effective August 17, 2012.

ADDRESSES: Electronic copies of the Comprehensive ACL Amendment, which includes a final environmental impact statement, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/Comp%20ACL%20Am%20101411%20FINAL.pdf.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 20, 2011, NMFS published a notice of availability for the Comprehensive ACL Amendment and requested public comment (76 FR 65153). On December 1, 2011, NMFS published a proposed rule for the Comprehensive ACL Amendment and requested public comment (76 FR 74757). Additionally, on December 30, 2011, NMFS published an amended proposed rule for the Comprehensive ACL Amendment to revise the commercial and recreational sector ACLs for wreckfish and requested public comment (76 FR 82264). The Secretary of Commerce approved the

Comprehensive ACL Amendment on January 18, 2012. The final rule to implement the Comprehensive ACL Amendment was published on March 16, 2012 (77 FR 15916).

On April 20, 2012, NMFS published a supplemental proposed rule to the Comprehensive ACL Amendment to revise the commercial quota (commercial ACL) for greater amberjack and requested public comment (77 FR 23652). A summary of the action implemented by this supplemental final rule is provided below.

The final rule to implement the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) implemented AMs and a recreational ACL for greater amberjack. However, as part of the rulemaking for the Comprehensive ACL Amendment, NMFS inadvertently failed to revise the commercial quota for greater amberjack. This supplemental final rule revises the greater amberjack commercial quota to accurately reflect the actions in the Comprehensive ACL Amendment and the Council's intent. This rule reduces the current commercial sector quota of 1,169,931 lb (530,672 kg), gutted weight, to 769,388 lb (348,989 kg), gutted weight.

Comments and Responses

A total of four comments letters were received on the supplemental proposed rule. Relevant comments were similar in content and are addressed in a single comment and response as follows.

Comment 1: The greater amberjack commercial quota should not be reduced to 769,388 lb (348,989 kg), gutted weight. The recent stock assessment indicated that greater amberjack is not undergoing overfishing and is not overfished. The lower quota will lead to greater economic hardships if greater amberjack is closed earlier each year.

Response: Although greater amberjack is not undergoing overfishing and is not overfished, the Magnuson-Stevens Act requires that a fishery management council specify ACLs for species in its FMPs at a level that may not exceed the fishing level recommendation of its scientific and statistical committee (SSC), and that ACLs prevent overfishing. The SSC recommendation that is the most relevant to ACLs is the acceptable biological catch (ABC). Based on the most recent stock assessment completed in 2008, the SSC recommended a greater amberjack stock ABC of 1,968,000 lb (892,670 kg), round weight. Therefore, the Council specified a stock ACL for greater amberjack of 1,968,000 lb (892,670 kg). As described in the Comprehensive ACL Amendment, the commercial sector allocation equates to a commercial ACL of 800,163 lb (362,948 kg), round weight, or 769,388 lb (348,989 kg), gutted weight.

NMFS agrees that if the new commercial quota is met in-season, negative economic effects could be experienced by commercial fishermen who target greater amberjack, because the current Federal regulations require that if commercial landings reach, or are projected to reach the commercial quota (ACL), then the commercial sector will close for the remainder of the fishing year. The fishing year for greater amberjack begins on May 1 and ends on April 30. For the period of 2005–2009, commercial greater amberjack landings did not exceed the commercial quota (ACL) being implemented through this rule. However, NMFS notes that preliminary greater amberjack commercial landings data for the 2011–2012 fishing year indicate that commercial landings may have exceeded the revised commercial quota being implemented through this rule, and might have triggered a closure had this rule been in place for the 2011–2012 fishing year. However, as noted above, the Council cannot set the ACL at a level that exceeds the ABC. NMFS will monitor commercial landings for the 2012–2013 fishing year, and subsequent years, to determine if the AM will be triggered and the commercial sector should be closed in-season.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this supplemental final rule is necessary for the conservation and management of the species within the Comprehensive ACL Amendment and is consistent with the Magnuson-Stevens Act, and other applicable law.

This supplemental final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the final rule to implement the Comprehensive ACL Amendment would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and the supplemental proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was proposed.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 12, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.42, paragraph (e)(3) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(3) *Greater amberjack*—769,388 lb (348,989 kg).

* * * * *

[FR Doc. 2012–17493 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–0648–XC112

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 200 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., July 1, 2012, through 1200 hrs, A.l.t., September 1, 2012.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, squids, sharks, octopuses, and sculpins. This prohibition does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock and vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 12, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 2012.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–17483 Filed 7–13–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 138
Wednesday, July 18, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 107

[Docket No. APHIS–2011–0048]

RIN 0579–AD66

Viruses, Serums, Toxins, and Analogous Products; Exemptions From Preparation Pursuant to an Unsuspended and Unrevoked License

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations to require that veterinary biologics prepared under the veterinary practitioner exemption must be prepared at the same facility the veterinarian utilizes in conducting the day-to-day activities associated with his or her practice. This exemption applies to veterinary biologics prepared by a veterinary practitioner solely for administration to animals in the course of a State-licensed professional practice of veterinary medicine under a veterinarian-client-patient relationship. This proposed amendment is necessary to ensure that veterinary biologics are not prepared in unlicensed establishments in violation of the Virus-Serum-Toxin Act. The effect of the proposed amendment would be to clarify the regulations regarding the preparation of product by a veterinary practitioner under a veterinarian-client-patient relationship.

DATES: We will consider all comments that we receive on or before September 17, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0048-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0048, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0048* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

SUPPLEMENTARY INFORMATION:

Background

The regulations in Title 9, Code of Federal Regulations (9 CFR), parts 101–118 (referred to below as the regulations) contain provisions implementing the Virus-Serum-Toxin Act (the Act), as amended (21 U.S.C. 151–159). These regulations are administered by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). The Act prohibits the preparation, sale, and shipment of veterinary biological products in or from the United States unless such products have been prepared under and in compliance with USDA regulations at an establishment holding an unsuspended and unrevoked license issued by USDA.

In part 102 of the regulations, §§ 102.1 and 102.2 require that each establishment and every person preparing biological products subject to the Act must hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biologics Establishment License issued by the Administrator and a U.S. Veterinary Biological Product License for each product prepared in such establishment. Part 107 of the regulations contains exemptions from the requirement for preparation pursuant to unsuspended and unrevoked establishment and product licenses. One of those exemptions, found in § 107.1(a), allows for product to be prepared by a veterinary practitioner solely for administration to animals in the course of his or her State-licensed professional practice of veterinary medicine under a veterinarian-client-patient relationship. The regulations in § 107.1(a)(1) set forth the criteria that must be satisfied in order to establish the existence of a veterinarian-client-patient relationship.

Recently, it has come to APHIS' attention that some veterinary practitioners may be entering into contractual agreements whereby product would be prepared by a commercial laboratory/manufacturing facility (unlicensed vaccine manufacturing establishment) rather than by the practitioner at the facility he or she uses to conduct the day-to-day activities associated with his or her State licensed practice of veterinary medicine. Such arrangements in which an unlicensed establishment, acting as an agent for the practitioner, prepares the product and sells and ships/transports the product directly to the animal owner creates a situation in which product is prepared, sold, and shipped in violation of the Act. Specifically, the Act states that no person, firm, or corporation shall prepare, sell, barter, exchange, or ship any virus, serum, toxin, or analogous product manufactured within the United States and intended for the treatment of animals, unless and until the said virus, serum, toxin, or analogous product shall have been prepared, under and in compliance with regulations at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Agriculture.

While part 107 of the regulations specifies the licensing exemption for product prepared by veterinary practitioners and sets forth the requirements for showing that a veterinarian-client-patient relationship exists, it appears that, given the instances described in the previous paragraph, some clarification is necessary with respect to the issue of the relationship between the veterinary practitioner and the facility where the product is prepared. The purpose of this provision is to allow a veterinarian to prepare veterinary biologics at the location where she or he operates a veterinary practice, which would not be

licensed under the Act, and to transport it away from that facility when necessary, for administration to an animal or animals under a veterinarian-client-patient relationship without violating the Act.

However, no provision in the Act or the regulations would allow a veterinary practitioner to take advantage of the licensing exemption while at the same time consigning the actual preparation of the product to a commercial laboratory/manufacturing establishment which would then exchange or deliver the product to a third party. An arrangement such as this is contrary to the statutory requirement that prohibits a person, firm, or corporation from preparing, selling, bartering, exchanging, or shipping a veterinary biologic intended for use in the treatment of animals unless and until such product shall have been prepared in compliance with the regulations in a USDA licensed establishment (see 21 U.S.C. 151).

In order to ensure that product subject to the exemption for products prepared by veterinarians solely for administration to animals in the course of a State licensed professional practice of veterinary medicine under a veterinarian-client-patient relationship is prepared in accordance with the requirements of the Virus-Serum-Toxin Act, APHIS is proposing to amend its regulations by adding clarifying language to § 107.1 emphasizing the requirement that the exemption from preparation pursuant to unsuspended and unrevoked product and establishment licenses applies only to product prepared by the veterinary practitioner (or by a supervised veterinary assistant) at the facility such veterinarian uses in the day-to-day operation of his/her State-licensed professional practice of veterinary medicine.

The proposed amendment would clarify that the preparation of product prepared by a veterinarian solely for administration to animals in the course of a State-licensed professional practice of veterinary medicine under a veterinarian-client-patient relationship shall only be done at a facility routinely used in the day-to-day operation of a professional practice of veterinary medicine.

We also propose to make minor changes to § 107.1 to replace the term ''establishments'' with ''facilities.'' As discussed above, § 107.1 exempts product prepared by a veterinary practitioner from preparation pursuant to an unsuspended and unrevoked product and establishment license. However, § 107.1 refers to the sites of such production as ''establishments,'' which is confusing because that term is used elsewhere in the regulations to refer only to production sites that are not exempt from the license requirement. For example, the definitions in § 101.2 define *establishment* as ''One or more premises designated on the establishment license.'' Therefore, in § 107.1 where we refer to the exemption for the site of day-to-day operation of a veterinarian's State-licensed professional practice, we would use the term ''facilities'' rather than ''establishments.''

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations in § 107.1 to clarify that the preparation of biological products pursuant to the exemption in paragraph (a)(1) of that section must take place at the same facility that the veterinarian preparing the product utilizes in conducting the day-to-day activities associated with his/her State-licensed professional practice of veterinary medicine.

As noted previously in this proposed rule, no provision in the Act or the regulations allows a veterinary practitioner to take advantage of the licensing exemption while at the same time consigning the actual preparation of the product to a commercial laboratory or other manufacturing establishment which would then exchange or deliver the product to a third party. An arrangement such as this is contrary to the statutory requirement that prohibits a person, firm, or corporation from preparing, selling, bartering, exchanging, or shipping a veterinary biologic intended for use in the treatment of animals unless and until such product shall have been prepared in compliance with the regulations in a USDA licensed establishment.

Therefore, this proposed amendment to the regulations is simply a clarification of an existing and longstanding prohibition. The proposed amendment would not change the nature of the exemption, the number of veterinary practitioners who are eligible to take advantage of the exemption, or the criteria that must be satisfied in order to establish the existence of a veterinarian-client-patient relationship, nor would it add any reporting or recordkeeping burden. It is possible that there may be one or several veterinary practitioners that currently contract with an unlicensed commercial laboratory or manufacturing facility to produce veterinary biologics in violation of the Act. These entities could be affected if they become aware of the violation through publication of this proposed rule and discontinue the prohibited activity, but that effect could also occur at any time under the current regulations if APHIS receives specific evidence of such a violation and orders its cessation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the category of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies where they are necessary to address local disease conditions or eradication programs. However, where safety, efficacy, purity, and potency of biological products are concerned, it is the Agency's intent to occupy the field. Under the Act, Congress clearly intended that there be national uniformity in the regulation of these products, and APHIS will continue to take enforcement action as necessary against practitioners and production facilities with regard to veterinary biologics produced or distributed in contravention of the Act. There are no administrative proceedings which must be exhausted prior to a judicial challenge to the regulations under this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 107

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 107 as follows:

PART 107—EXEMPTIONS FROM PREPARATION PURSUANT TO AN UNSUSPENDED AND UNREVOKED LICENSE

1. The authority citation for part 107 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 107.1 is amended as follows:

a. In the introductory text and in paragraph (a)(1), by removing the word ''establishments'' and adding the word ''facilities'' in its place.

b. By redesignating paragraph (a)(2) as paragraph (a)(3) and adding a new paragraph (a)(2) to read as follows:

§ 107.1 Veterinary practitioners and animal owners.

* * * * *

(a) * * *

(2) All steps in the preparation of product being prepared under the exemption in paragraph (a)(1) of this section must be performed at the facilities that the veterinarian utilizes for the day-to-day activities associated with the treatment of animals in the course of his/her State-licensed professional practice of veterinary medicine. A veterinary assistant employed by the veterinary practitioner and working at the veterinary practice's facility under the veterinarian's direct supervision may perform the steps in the preparation of product. Such preparation may not be consigned to any other party or sub-contracted to a commercial laboratory/manufacturing facility.

* * * * *

Done in Washington, DC, this 12th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17533 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG37

Small Business Size Standards: Construction

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for one industry and one sub-industry in North American Industry Classification System (NAICS) Sector 23, Construction. SBA proposes to increase the size standard for NAICS 237210, Land Subdivision, from $7 million to $25 million and the size standard for Dredging and Surface Cleanup Activities, a sub-industry category (or an ''exception'') under NAICS 237990, Other Heavy and Civil Engineering Construction, from $20 million to $30 million in average annual receipts. As part of its ongoing comprehensive size standards review, SBA has evaluated all size standards in NAICS Sector 23 to determine whether they should be retained or revised. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that the document is available on its Web site at *www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before September 17, 2012.

ADDRESSES: Identify your comments by RIN 3245–AG37 and submit them by one of the following methods: (1) *Federal eRulemaking Portal: www.regulations.gov,* following the instructions for submitting comments; or (2) Mail/*Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Ph.D., Economist, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size: Average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also adjusts its monetary based size standards for inflation at least once every five years. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Given its importance in the Federal Procurement market, SBA has studied and reviewed the construction industry over time. In 1985, SBA adopted a new size standard for the Dredging sub-industry (an exception within NAICS industry 237990). The new size standard was based on a 1984 study of the industry structure, conducted in cooperation with the Corps of Engineers and members of the industry. The final rule was published in the **Federal Register** on November 8, 1985 (50 FR 46418). Finally, the industry's

definitions under the NAICS changed significantly in 2002, requiring SBA to adjust its size standards (including those in NAICS Sector 23) accordingly (67 FR 52633).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA conduct a review of all size standards not less frequently than once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. A NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in a NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at *www.regulations.gov*. SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate for every industry. For example, since all industries in NAICS Sector 23 have receipts based size standards the methodology described in this proposed rule applies only to establishing receipts based size standards. However, the methodology is available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's size standards methodology should be submitted via: (1) The Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; the docket number is SBA–2009–0008; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov*. As of December 29, 2011, SBA has received 14 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov*. SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to size standards in NAICS Sector 23. This proposed rule affords the public an opportunity to review and to comment on SBA's proposals to revise size standards in NAICS Sector 23, as well as on the data and methodology it used to evaluate and revise the size standards.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, NAICS codes for the Wholesale Trade Sector and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size

standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44–45), is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor is neither a minimum nor a maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from other industries with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is generally appropriate for that industry. SBA may consider adopting a size standard below the anchor when: (1) All or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group; or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 23, SBA has developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 23. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size*.

1. *Average firm size.* SBA computes two measures of average firm size: Simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor size standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share

of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its share of economic activity within the industry is less than 40 percent. For an industry with a four-firm concentration ratio of 40 percent or more, SBA examines the average size of the four largest firms to determine a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor in assessing industry competition. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size*.) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group this may, all else being equal, warrant a size standard higher than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, this could justify considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if: (1) The small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts; and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. For this, SBA examines the data on volume and number of guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, SBA does not consider this factor when determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 Economic Census (*see www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts, and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's ''Size Standards Methodology'' White Paper, which is available at *www.sba.gov/size.*

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is: (1) Independently owned and operated; (2) not dominant in its field of operation; and (3) within a specific small business definition or size standard established by SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that such a large number of different small business size standards is unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

All size standards in NAICS Sector 23 are based on average annual receipts. SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 23. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14.0 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of the large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519, and NAICS 811212), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). The SBA also, more recently, established common size standards for the industries in NAICS Industry Group 5411, Legal Services, and for the industries in NAICS Industry Group 5412, Accounting Services (77 FR 7490 (February 10, 2012)). In NAICS Sector 23, currently all industries in NAICS Subsector 236 (Construction of Buildings), and all industries in NAICS Industry Group 2371 (Utility System Construction) have common size standards. Similarly, all industries within NAICS Subsector 238 (Specialty Trade Contractors) also have a common size standard. In this proposed rule, SBA proposes to retain common size standards for all industries within NAICS Subsector 236 (Construction of Buildings), NAICS Industry Group 2371 (Utility System Construction), and NAICS Subsector 238 (Specialty Trade Contractors). Whenever SBA proposes a common size standard for closely related industries it will provide its justification.

Evaluation of Industry Structure

SBA evaluated all 31 industries and one sub-industry in NAICS Sector 23, Construction, to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The proposed new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two

comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. firm size ($ million)		Avg. assets size ($ million)	Four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million}* 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology'' which is available on its Web site at *www.sba.gov/size.* (However, it should be noted that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors and Supported Size Standards, below, shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If Simple avg. receipts size ($ million)	*Or if* Weighted avg. receipts size ($ million)	*Or if* Avg. assets size ($ million)	*Or if* Avg. receipts of largest four firms ($ million)	*Or if* gini coefficient	Then Implied size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the

impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in its size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market that SBA should consider.

Twenty of the 31 industries in NAICS Sector 23 and the sub-industry category (''exception'') under NAICS 237990 (Other Heavy and Civil Engineering Construction),averaged $100 million or more annually in Federal contracting during fiscal years 2008–2010. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) in 9 of those 20 industries and a separate size standard was derived from that factor for each of them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard only if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, SBA does not estimate a size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's four largest firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars).

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS Code/NAICS industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
236115 New Single-Family Housing Construction (except Operative Builders)	$1.5	$22.3	$1.2	2.7	$599.2	0.670	−62.8	.....	.....
	7.0	7.0	10.0	.....	.....	$5.0	$35.5	$14.0	$33.5
236116 New Multifamily Housing Construction (except Operative Builders)	11.7	119.2	6.0	17.8	1,547.0	0.833	−27.1	.....	.....
	35.5	30.0	35.5	.....	.....	$30.0	$35.5	35.5	33.5
236117 New Housing Operative Builders	5.2	291.5	4.8	17.9	8,097.5	0.874	4.2	.....	.....
	30.0	35.5	35.5	.....	.....	$35.5	.....	35.5	33.5
236118 Residential Remodelers	0.71	9.0	0.2	2.6	337.8	0.566	−77.1	.....	.....
	5.0	5.0	5.0	.....	.....	$5.0	$35.5	14.0	33.5
236210 Industrial Building Construction	9.2	71.1	3.2	14.4	629.5	0.802	−3.2	.....	.....
	35.5	19.0	30.0	.....	.....	$25.5	.....	25.5	33.5
236220 Commercial and Institutional Building Construction	10.1	161.3	3.2	5.7	5,311.1	0.839	−0.9	.....	.....
	35.5	35.5	30.0	.....	.....	$30.0	.....	30.0	33.5
237110 Water and Sewer Line and Related Structures Construction	4.5	44.9	2.1	4.3	520.0	0.765	−10.6	.....	.....
	25.5	14.0	19.0	.....	.....	$19.0	$35.5	25.5	33.5
237120 Oil and Gas Pipeline and Related Structures Construction	16.9	150.0	7.8	17.6	1,362.9	0.840	−0.1	.....	.....
	35.5	35.5	35.5	.....	.....	$30.0	.....	35.5	33.5
237130 Power and Communication Line and Related Structures Construction	6.8	129.6	2.9	20.8	1,767.4	0.864	10.5	.....	.....
	35.5	30.0	25.5	.....	.....	$35.5	.....	30.0	33.5
237210 Land Subdivision	3.6	38.0	11.9	12.1	690.2	0.796	.....	.....	.....
	19.0	10.0	35.5	.....	.....	$25.5	.....	25.5	7.0
237310 Highway, Street and Bridge Construction	10.6	96.0	5.0	5.2	1,393.9	0.811	5.7	.....	.....
	35.5	25.5	35.5	.....	.....	$25.5	.....	30.0	33.5
237990 Other Heavy and Civil Engineering Construction, Except Dredging and Surface Cleanup Activities	5.0	59.9	2.5	10.7	476.2	0.812	−9.9	.....	.....
	30.0	14.0	19.0	.....	.....	$25.5	.....	19.0	33.5
237990 Dredging and Surface Cleanup Activities	44.0	542.1	21.6	52.5	976.0	0.797	9.8	.....	.....
	35.5	35.5	35.5	.....	19.0	$25.5	.....	30.0	20.0
238110 Poured Concrete Foundation and Structure Contractors	1.9	32.5	0.75	4.5	535.5	0.739	−18.0	.....	.....
	10.0	10.0	7.0	.....	.....	$14.0	$19.0	14.0	14.0
238120 Structural Steel and Precast Concrete Contractors	4.1	26.1	1.7	7.0	258.2	0.725	−23.5	.....	.....
	25.5	7.0	14.0	.....	.....	$14.0	$19.0	14.0	14.0
238130 Framing Contractors	0.9	13.6	0.3	3.8	170.8	0.657	1.6	.....	.....
	5.0	5.0	5.0	.....	.....	$5.0	.....	5.0	14.0
238140 Masonry Contractors	1.1	11.5	0.4	2.3	155.9	0.685	−6.4	.....	.....
	7.0	5.0	5.0	.....	.....	$5.0		5.0	14.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued
[Millions of dollars]

NAICS Code/NAICS industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
238150 Glass and Glazing Contractors	2.1	16.7	0.7	5.6	150.4	0.686	8.1	.....	.....
	10.0	7.0	5.0	.....	.....	$5.0	.....	7.0	14.0
238160 Roofing Contractors	1.8	14.3	0.6	3.6	263.5	0.684	17.0	.....	.....
	10.0	5.0	5.0	.....	.....	$5.0	.....	5.0	14.0
238170 Siding Contractors	0.7	5.0	.....	2.6	46.7	0.556	−7.5	.....	.....
	5.0	5.0	.....	.....	.....	$5.0	.....	5.0	14.0
238190 Other Foundation, Structure, and Building Exterior Contractors	1.4	13.3	0.5	10.4	176.6	0.680	−34.8	.....	.....
	7.0	5.0	5.0	.....	.....	$5.0	$25.5	10.0	14.0
238210 Electrical Contractors and Other Wiring Installation Contractors	1.8	36.6	0.6	3.5	1,128.6	0.738	12.1	.....	.....
	10.0	10.0	5.0	.....	.....	$14.0	.....	10.0	14.0
238220 Plumbing, Heating, and Air-Conditioning Contractors	1.8	34.4	0.6	4.0	1,623.6	0.720	19.3	.....	.....
	10.0	10.0	5.0	.....	.....	$10.0	.....	7.0	14.0
238290 Other Building Equipment Contractors	4.2	97.5	1.4	27.6	1,689.8	0.818	21.9	.....	.....
	25.5	25.5	14.0	.....	.....	$25.5	.....	19.0	14.0
238310 Drywall and Insulation Contractors	2.1	42.3	0.7	6.3	679.6	0.762	18.6	.....	.....
	10.0	14.0	5.0	.....	.....	$19.0	.....	14.0	14.0
238320 Painting and Wall Covering Contractors	0.6	7.3	0.2	2.2	121.6	0.578	−7.3	.....	.....
	5.0	5.0	5.0	.....	.....	$5.0	.....	5.0	14.0
238330 Flooring Contractors	1.1	17.8	0.3	5.9	231.6	0.694	5.3	.....	.....
	5.0	7.0	5.0	.....	.....	$7.0	.....	7.0	14.0
238340 Tile and Terrazzo Contractors	0.9	8.7	0.3	2.9	74.3	0.634	−1.8	.....	.....
	5.0	5.0	5.0	.....	.....	$5.0	.....	5.0	14.0
238350 Finish Carpentry Contractors	0.7	7.9	0.2	2.7	178.4	0.597	−2.7	.....	.....
	5.0	5.0	5.0	.....	.....	$5.0	.....	5.0	14.0
238390 Other Building Finishing Contractors	1.4	8.7	0.5	3.8	80.9	0.673	−28.8	.....	.....
	7.0	5.0	5.0	.....	.....	$5.0	.....	5.0	14.0
238910 Site Preparation Contractors	1.9	25.0	1.0	1.7	349.0	0.728	−12.1	.....	.....
	10.0	7.0	7.0	.....	.....	$14.0	$19.0	14.0	14.0
238990 All Other Specialty Trade Contractors	1.4	15.5	0.5	4.9	473.7	0.673	−23.9	.....	.....
	7.0	7.0	5.0	.....	.....	$5.0	$19.0	10.0	14.0

Common Size Standards

When many of the same businesses operate in multiple industries, SBA believes that a common size standard can be appropriate for these industries even if the industry and relevant program data might suggest different size standards. For instance, in past rules, SBA has established a common size standard for Computer Systems Design and Related Services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the ''exception'' for Information Technology Value Added Resellers), and NAICS 811212. Another example is the common size standard for certain Architectural, Engineering (A&E) and Related Services. These include NAICS 541310, NAICS 541330 (excluding the ''exceptions''), Map Drafting (an ''exception'' under NAICS 541340), NAICS 541360, and NAICS 541370 (64 FR 28275(May 25, 1999)). More recently, SBA established a common size standard for some of the industries in NAICS Sector 44–45, Retail Trade, as well (*see* 75 FR 61597 (October 6, 2010)). The SBA also, more recently, established common size standards for the industries in NAICS Industry Group 5411, Legal Services, and for the industries in NAICS Industry Group 5412, Accounting Services (77 FR 7490 (February 10, 2012)). Similarly, SBA proposed common size standards for several other industries in NAICS Sector 48–49, Transportation and Warehousing (*see* 76 FAR 27935 (May 13, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (*see* 76 FR 63510 (October 12, 2011), and NAICS Sector 53, Real Estate and Rental and Leasing (*see* 76 FR 70680 (November 15, 2011)).

For NAICS Sector 23, SBA derives, as an alternative to a separate size standard for each industry, common size standards for industries in two NAICS Subsectors and one NAICS Industry Group, as shown in Table 4, Subsectors and Industry for Common Sized Standards. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Industry Group and Subsector using the same method as described above. The results are in Table 5, Size Standards Supported by Each Factor for NAICS Subsectors 236 and 238, and Industry Group 2371, which immediately follows Table 4, Subsectors and Industry Groups for Common Size Standards, below.

TABLE 4—SUBSECTORS AND INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

NAICS Subsector or industry group code *	NAICS Subsector or industry group title	Industries: 6-digit NAICS codes
236	Construction of Buildings	236115, 236116, 236117, 236118, 236210, 236220.
2371	Utility System Construction	237110, 237120, 237130.

TABLE 4—SUBSECTORS AND INDUSTRY GROUPS FOR COMMON SIZE STANDARDS—Continued

NAICS Subsector or industry group code *	NAICS Subsector or industry group title	Industries: 6-digit NAICS codes
238	Specialty Trade Contractors	238110, 238120, 238130, 238140, 238150, 238160, 238170, 238190, 238210, 238220, 238290, 238310, 238320, 238330, 238340, 238350, 238390, 238910, 238990.

* Industries in these Subsectors and Industry Group currently have common size standards. SBA proposes to retain these standards.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR NAICS SUBSECTORS 236 AND 238, AND INDUSTRY GROUP 2371

NAICS Code/subsector or industry group title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coeffi-cient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
236 Construction of Buildings	$3.6	$141.1	$1.5	4.8	$9,010.7	0.846	−10.8	.....	.....
	19.0	35.5	14.0			$30.0	$35.5	25.5	$33.5
2371 Utility System Construction	6.5	96.9	3.0	7.9	2,231.6	0.828	0.5	30.0	33.5
	35.50	25.5	25.5			$30.0			
238 Specialty Trade Contractors	1.5	27.0	0.5	1.6	2,807.0	0.721	−1.1	7.0	14.0
	7.0	10.0	5.0			$10.0			

Special Considerations: Dredging and Surface Cleanup Activities

The Dredging and Surface Cleanup Activities (Dredging) size standard is a sub-industry category (or an ''exception'') established by SBA within the 6-digit NAICS 237990 (Other Heavy and Civil Engineering Construction). Data from the Census Bureau's special tabulation are limited to the 6-digit NAICS industry level, and hence, do not provide separate data at the sub-industry level. As such, SBA relied upon data from other sources to evaluate the current $20 million size standard for Dredging. Firms engaged in the Dredging sub-industry were identified from contracting activity reported in FPDS–NG during fiscal years 2008–2010. Dredging contracts can be identified as those classified within NAICS 237990 and by four Product Service Codes (PSCs): Y216 (Construction of Dredging), Z216 (Maintenance, Repair or Alteration of Dredging), Y217 (Dredging, Incl. Dustpan and Sea-Going Hoppers), and Z217 (Dredging, Incl. Dustpan and Sea-Going Hoppers). SBA also looked at Dredging contracting data from the Corps of Engineers' Navigation Data Center (*www.ndc.iwr.usace.army.mil/dredge/dredge.htm*) for the same period. SBA obtained receipts and employment data from the Central Contractor Registration (CCR) for the identified Dredging firms to develop the size standards evaluation factors. Based on the analysis of the resultant data, a different size standard for Dredging than for other heavy construction activities in NAICS 237990 continues to be appropriate. Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), above, shows the results from the analysis of the Dredging sub-industry, which supported a $30 million size standard instead of the current $20 million.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS Sector 23, Construction, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 6, Summary of Size Standards Analysis, below, summarizes the results of SBA analyses of industry specific size standards from Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), above, and the results for common size standards from Table 5, Size Standards Supported by Each Factor for NAICS Subsectors 236 and 238, and Industry Group 2371, above. In terms of industry specific size standards, the results in Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), might support increases in size standards for five industries and one sub-industry, decreases for 22 industries and no changes for four industries. Based on common size standards for certain NAICS Industry Groups and Subsectors as explained earlier, the results in Table 5, Size Standards Supported by Each Factor for Subsectors 236 and 238 and Industry Group 2371, above, appear to support increases in size standards for one industry and one sub-industry, decreases for 28 industries and no changes for two industries.

However, SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest

and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate is still high at 8.2 percent in June 2012 and is forecast to remain around this level at least through the end of 2012. In June 2012, unemployment data by industry and class of workers showed that construction workers experience the worst unemployment rate of all industries at 12.8 percent.

Recently, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs. A proposal to reduce size standards will have an immediate impact on jobs, and it would be contrary to the expressed will of the President and the Congress.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS Code	NAICS Industry title	Current size standard ($ million)	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)
236115	New Single-Family Housing Construction (except Operative Builders)	$33.5	$14.0	$25.5
236116	New Multifamily Housing Construction (except Operative Builders)	33.5	35.5	25.5
236117	New Housing Operative Builders	33.5	35.5	25.5
236118	Residential Remodelers	33.5	14.0	25.5
236210	Industrial Building Construction	33.5	25.5	25.5
236220	Commercial and Institutional Building Construction	33.5	30.0	25.5
237110	Water and Sewer Line and Related Structures Construction	33.5	25.5	30.0
237120	Oil and Gas Pipeline and Related Structures Construction	33.5	35.5	30.0
237130	Power and Communication Line and Related Structures Construction	33.5	30.0	30.0
237210	Land Subdivision	7.0	25.5	.....
237310	Highway, Street and Bridge Construction	33.5	30.0	.....
237990	Other Heavy and Civil Engineering Construction	33.5	19.0	.....
Except,	Dredging and Surface Cleanup Activities	20.0	30.0	.....
238110	Poured Concrete Foundation and Structure Contractors	14.0	14.0	7.0
238120	Structural Steel and Precast Concrete Contractors	14.0	14.0	7.0
238130	Framing Contractors	14.0	5.0	7.0
238140	Masonry Contractors	14.0	5.0	7.0
238150	Glass and Glazing Contractors	14.0	7.0	7.0
238160	Roofing Contractors	14.0	5.0	7.0
238170	Siding Contractors	14.0	5.0	7.0
238190	Other Foundation, Structure, and Building Exterior Contractors	14.0	10.0	7.0
238210	Electrical Contractors and Other Wiring Installation Contractors	14.0	10.0	7.0
238220	Plumbing, Heating, and Air-Conditioning Contractors	14.0	7.0	7.0
238290	Other Building Equipment Contractors	14.0	19.0	7.0
238310	Drywall and Insulation Contractors	14.0	14.0	7.0
238320	Painting and Wall Covering Contractors	14.0	5.0	7.0
238330	Flooring Contractors	14.0	7.0	7.0
238340	Tile and Terrazzo Contractors	14.0	5.0	7.0
238350	Finish Carpentry Contractors	14.0	5.0	7.0
238390	Other Building Finishing Contractors	14.0	5.0	7.0
238910	Site Preparation Contractors	14.0	14.0	7.0
238990	All Other Specialty Trade Contractors	14.0	10.0	7.0

Lowering size standards would decrease the number of firms that participate in Federal financial and procurement assistance programs for small businesses. It would also affect small businesses that are now exempt from or receive some form of relief from myriad other Federal regulations that use SBA's size standards. That impact could take the form of increased fees, paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. In NAICS Sector 23, more than 7,000 businesses would lose their small business eligibility if size standards were lowered based solely on results from industry specific analysis. Similarly, more than 10,000 businesses would lose small business eligibility if size standards were lowered based solely on results from common size standards analysis. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not intend to reduce size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards.

Furthermore, as stated previously, the Small Business Act requires the Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size

standards. The current economic conditions and the impact on job creation are quite relevant factors when establishing small business size standards. SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

Based on comparisons between industry specific size standards and common size standards within each Industry Group or Subsector, SBA finds that for several industries, as shown in Table 4, Subsectors and Industry Groups for Common Size Standards, above, common size standards are more appropriate for several reasons. First, analyzing industries at the more aggregated Industry Group or Subsector levels simplifies size standards analysis, and the results will be more consistent among related industries. Second, in NAICS Sector 23, industries within each Industry Group or Subsector currently have the same size standards and SBA believes it is better to keep the revised size standards also same unless industries are significantly different. Third, within each Industry Group or Subsector many of the same businesses tend to operate in the same multiple industries. SBA believes that common size standards reflect the Federal marketplace in those industries better than different size standards for each industry.

For industries where both industry specific size standards and common size standards have been calculated, for the above reasons, SBA proposes to apply common size standards. For industries and one sub-industry (Dredging) where SBA has not estimated common size standards it proposes to apply industry specific size standards. As discussed above, lowering small business size standards is inconsistent with what the Federal government is doing to stimulate the economy and would discourage job growth for which Congress established the Recovery Act and Jobs Act. In addition, it would be inconsistent with the Small Business Act requiring the Administrator to establish size standards based on industry analysis and other relevant factors such as current economic conditions. Thus, SBA proposes to increase size standards for one industry and one sub-industry in NAICS Sector 23 and retain the current size standards for all other industries in that Sector. The SBA's proposed increases are in Table 7, Summary of Proposed Size Standards Revisions, (below).

In addition, retaining current standards when the analytical results suggested lowering them is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency's recently issued proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) for NAICS Sector 54, Professional, Scientific and Technical Services, NAICS Sector 48–49, Transportation and Warehousing (76 FR 27935 (May 13, 2011)), NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), and NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule.

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS code	NAICS Industry title	Current size standard ($ million)	Proposed size standard ($ million)
237210	Land Subdivision	$7.0	$25.5
237990 Except	Dredging and Surface Cleanup Activities	$20.0	$30.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 23, Construction, for which it has proposed to increase size standards, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed individual size standards, if adopted, the small business share of total industry receipts among those industries is, on average, 0.1 percent, varying from 0.01 percent to 0.3 percent. These market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether this is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether SBA's proposal to increase two size standards and retain the remaining 30 size standards in NAICS Sector 23 is appropriate given the economic characteristics of each industry reviewed in this proposed rule. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA proposes common size standards for industries within NAICS Subsectors 236 and 238, and NAICS Industry Group 2371 (Utility System Construction). SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt common size standards for those industries or establish a separate size standard for each industry; and

b. Whether the proposed common size standards for those industries are at the correct levels or what would be more appropriate if what SBA has proposed are not appropriate.

4. SBA's proposed size standards are based on five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-

firm concentration ratio, distribution of firms by size, and the total share and small business share of Federal contracting dollars of the evaluated industries. SBA welcomes comments on these factors and/or suggestions of other factors that it should consider when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than what it uses, if available.

5. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggested weights for each factor along with supporting information.

6. For NAICS 237210, Land Subdivision, based on its analysis of industry and program data alone, SBA proposes to increase the existing size standards by a large amount, while it proposes to retain the current size standards for most other industries in NAICS Sector 23. SBA seeks feedback on whether, as a policy, it should limit the increase to a size standard or establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

7. In addition to comments on its proposal to increase the size standard for Dredging and Surface Cleanup Activities from current $20 million to $30 million, SBA also seeks comments regarding the requirement for a dredging concern to qualify as small on a Federal procurement that it must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern (*see* Footnote 2 in 13 CFR 121.201). This requirement has been in SBA's small business size regulations since 1974 (*see* 30 FR 24669, July 5, 1974 and 39 FR 31302, August 28, 1974). This proposed rule retains the requirement set forth in Footnote 2 in order to ensure that small Dredging firms perform a significant and meaningful portion of a Dredging project set aside for small business. However, SBA has heard from small dredging firms that believe they should be able to lease equipment from any size firm as long as employees from the small firm perform the work on the contract. SBA specifically request comments as to whether the footnote is necessary. Comments pertaining to this requirement should address: (1) Whether there continues to be a need to retain the current 40 percent equipment requirement; (2) whether the 40 percent equipment requirement should be revised, and if so, the rationale for an alternative percentage; and (3) whether a different and more verifiable requirement based on an alternative measure (such as value of contract or personnel involved) may achieve the same objective of ensuring that small businesses perform significant and meaningful work on Dredging contracts.

8. For analyzing the dredging size standard, a sub-industry (''exception'') within NAICS 237990, SBA used PSCs within NAICS 237990 to identify contracting activity reported in FPDS–NG, and firms in the dredging sub-industry during fiscal years 2008–2010. Using the receipts and employment data for those identified firms from CCR, SBA analyzed the industry factors for this sub-industry. SBA seeks suggestions or comments on the use of the data sources and the proposed size standard.

9. SBA is also interested in comments on the elimination of the sub-industry category for Dredging, and the application of the same size standard as for the rest of the NAICS 237990. Comments on applying the same NAICS 237990 size standard for Dredging should address the basis for why that industry size standard is more suitable than a specific dredging sub-industry size standard or why dredging firms should continue to be evaluated as a discrete sub-industry for SBA's size standards purposes.

10. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and its proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a ''major'' rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards revisions in NAICS Sector 23, Construction, will better reflect the economic characteristics of small businesses in this Sector and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business size definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development

programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that in one industry and one sub-industry for which SBA has proposed to increase size standards more than 400 firms in NAICS 23, not small under the existing size standards, will become small under the proposed size standards and therefore become eligible for these programs. That is about 0.1 percent of all firms classified as small under the current size standards in NAICS Sector 23. If adopted as proposed, this will increase the small business share of total receipts in all industries within NAICS Sector 23 from about 49.7 percent to 50 percent. In addition, as stated above, there will be reduced fees, less paperwork, and fewer compliance requirements for more businesses.

Three groups will benefit from the proposed size standards revisions in this rule, if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimates that firms gaining small business status under the proposed size standards could receive Federal contracts totaling $17 million to $20 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008–2010 data, SBA estimates about up to five additional loans totaling about $0.5 million to $1 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and, (2) as described above, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

To the extent that those 400 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the government associated with there being more bidders on small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration (CCR)'s Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVO SBC, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The proposed size standards revisions, if adopted, may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision. The proposed revisions to the existing size standards for one industry and one-sub-industry in NAICS Sector 23, Construction, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its size standards methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 23, Construction, is consistent with Executive Order 13563, Sec 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 23, Construction. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sector 23. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that more than 400 additional firms will become small because of increased size standards one industry and one sub-industry in NAICS Sector 23. That represents 0.1 percent of total firms that are small under current size standards in all industries within that Sector. This will result in an increase in the small business share of total industry receipts for the Sector from 49.7 percent under the current size standards to 50 percent under the proposed size standards. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses

register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''237210'', and ''Except'' under entry ''237990'', to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
237210	Land Subdivision	$25.5	
*	* * * * *	*	*
Except,	Dredging and Surface Cleanup Activities [2]	[2] 30.0	
*	* * * * *	*	*

* * * * * * *

[2] NAICS code 237990—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

* * * * *

Dated: February 28, 2012.

Karen G. Mills,

Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG36

Small Business Size Standards: Arts, Entertainment, and Recreation

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase the small business size standards for 17 industries in North American Industry Classification System (NAICS) Sector 71, Arts, Entertainment, and Recreation. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all size standards in NAICS Sector 71 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposed rules that examines size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** that the document is available on its Web site at *www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before September 17, 2012.

ADDRESSES: You may submit comments, identified by RIN 3245–AF36, by one of the following methods: (1) Federal

eRulemaking Portal: *www.regulations.gov*; follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments submitted by email.

SBA will post all comments to this proposed rule on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov*, you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. The SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Economist, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the start of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's Table of size standards). Thirty-one of these size standards were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing a group of industries within an NAICS Sector. An NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more industries. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise size standards for those industries for which currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards, which SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for establishing, reviewing and modifying size standards when necessary. SBA has published this document on its Web site at *www.sba.gov/size* for public review and comments and also included it, as a supporting document, in the electronic docket of this proposed rule at *www.regulations.gov*. SBA does not apply every feature of its methodology to every size standard evaluation because not all features are appropriate for every industry. For example, since all industries in NAICS Sector 71 have receipts based size standards, the methodology described in this proposed rule applies to establishing receipts based standards. However, the methodology is made available in its entirety for parties who are interested in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider. Comments on the SBA's methodology should be submitted via: (1) the Federal eRulemaking Portal: *www.regulations.gov*; the docket number is SBA–2009–0008; follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov*. As of July 18, 2012, SBA has received 13 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov*. SBA continues to welcome comments on its methodology from interested parties.

Congress granted discretion to SBA's Administrator to establish detailed small business size standards. 15 U.S.C.

632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to the analysis of an industry's structure, SBA also considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule, when it establishes small business size standards. SBA also examines whether a size standard based on industry and other relevant data successfully exclude businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria the Agency used to propose any adjustments to size standards in NAICS Sector 71. It also explains why SBA has proposed to adjust some size standards in NAICS Sector 71 but not others. This proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 71 as well as on the data and methodology it uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, SBA has set 100 employees as the size standard for all industries in the Wholesale Trade Sector for SBA's financial assistance programs. However, NAICS codes for Wholesale Trade Industries (NAICS Sector 42) and their 100 employee size standards for the Wholesale Trade Sector do not apply to Federal procurement programs. Rather, for Federal procurement purposes the size standard is 500 employees for all industries in Wholesale Trade (NAICS Sector 42), and for all industries in Retail Trade (NAICS Sector 44–45) under the SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, but the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when: (1) All or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group; or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those of the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 71 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts, with the weighted average size standard for the group being $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA also evaluates, as an additional primary factor, the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA's financial assistance, other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below are brief descriptions of each of the five primary

factors that SBA has evaluated in each industry in NAICS Sector 71 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size*.

1. *Average firm size.* SBA computes two measures of average firm size: Simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally, regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets as a proxy measure to assess the levels of capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. The SBA then applies these ratios to the average receipts of firms in that industry. An industry with a significantly higher level of average assets than that of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, if the industry has a significantly smaller average assets compared to the anchor comparison group, the anchor size standard, or, in rare cases, one lower than the anchor, may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor that SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this would indicate that small businesses are competitive in that industry. This supports adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this would indicate that small businesses are not competitive in that industry. This would support adopting a size standard above the anchor.

Concentration among firms is a measure of inequality of distribution. To evaluate the degree of inequality of distribution within an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size*.) Gini coefficient values vary from zero to one. If an industry's total receipts reflect equal distribution among the industries, the Gini coefficient will equal zero. If a single firm accounts for an industry's total receipts, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group this may, all else being equal, warrant a higher size standard than the anchor. Conversely, if an industry shows a similar or lower Gini coefficient than industries in the anchor group, the anchor standard, or, in some cases, a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA's loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, different skill sets required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, and other factors, will likely influence the type of firms that compete for Federal contracts. By comparing the Federal contracting small business share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if: (1) The small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts; and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect a significant level of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates

the influence of a proposed size standard on SBA's loan programs. For this, SBA examines the volume and number of SBA's guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that current size standards have impeded financial assistance to small businesses, this can support higher size standards. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the businesses receiving SBA's financial assistance are much smaller than the existing size standards, this factor may not be considered in determining the size standards.

Sources of Industry and Program Data

The SBA's primary source of industry data used in this proposed rule is a special tabulation of the data from 2007 Economic Census (see *www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for the Agency. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by NAICS Sector (2-digit level), Subsector (3-digit level), Industry Group (4-digit level), Industry (6-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector) or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the SBA's ''Size Standards Methodology'' White Paper, which is available at *www.sba.gov/size*.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. § 632(a)) defines a small business concern as one that is: (1) Independently owned and operated; (2) not dominant in its field of operation; and (3) within a specific small business definition or size standard established by the SBA's Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed size standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the start of current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that to have so many different size standards with small variations among them is unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 71. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. To establish these eight receipts based size standard levels, SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive size standards review, the most commonly used receipts based size standards clustered around the following: $2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is also an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the size standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million include those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between some of the fixed levels, SBA also established two intermediate levels: Namely, $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. All industries in NAICS

Sector 71 currently have the common $7 million size standard. However, the latest industry data neither supported the current common $7 million nor a different common size standard for all industries within the Sector. Furthermore, the industry specific results showed too much variation to support common size standards for industries even at the 4-Digit NAICS Industry Group level.

Evaluation of Industry Structure

SBA evaluated the structure of all 25 industries in NAICS Sector 71, Arts, Entertainment and Recreation, to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry in NAICS Sector 71 to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The level of the new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based size standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, below, shows two measures of the average firm size (simple and weighted), the average assets size, the four-firm concentration ratio, the average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. firm size ($ million)		Avg. assets size ($ million)	Four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, Average Characteristics of Receipts Based Comparison Groups, above, SBA derives a separate size standard based on the differences between the values for the industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7.0 million anchor size standard appropriate for that factor.

An industry factor with a value significantly above or below the anchor comparison group will generally warrant a size standard above or below the $7.0 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that would support a $19 million size standard. The $3.3 million level is 52.8 percent between the average firm size of $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.616 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.616 million). The final step is to round the estimated $18.616 million size standard to the nearest fixed size standard level, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in the SBA's ''Size Standards Methodology,'' available on SBA's Web site at *www.sba.gov/size.* (However, note that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available.) Table 2, Values of Industry Factors and Support Size Standards, below, shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standards Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are at obtaining Federal contracts under current size standards. For the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than the current size standard for industries where the small business share of total Federal contracting dollars is 10 to 30 percentage points lower than the small business share of total industry receipts and at two levels higher than the current size standard where the difference is more than 30 percentage points.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may enable SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

None of the 25 industries in NAICS Sector 71 averaged $100 million or more annually in Federal contracting during fiscal years 2008–2010, suggesting that Federal contracting activity is insignificant in that Sector. In fact, based on data for fiscal years 2008–2010, Federal contracting for the entire Sector was less than $90 million. Accordingly, the Federal contracting factor is not factored in to calculate the new size standards for all industries in NAICS Sector 71.

New Size Standards Based on Industry Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), below, shows the results of analyses of industry factors for each industry in NAICS Sector 71. Many of the NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no estimated size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. As mentioned earlier, since the Federal contracting factor was significant in none of the industries in NAICS Sector 71, no size standard was estimated for that factor. Column 8 shows a calculated new size standard for each industry. This is the average of the size standards supported by each industry factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 9 of Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), below.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS Code/industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Calculated new size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
711110 Theater Companies and Dinner Theaters	$2.1	$28.0	$1.6	14.7	$252.7	0.793		
	10.0	10.0	14.0			$25.5	$19.0	$7.0
711120 Dance Companies	1.1	15.1		23.1	34.5	0.738		
	7.0	5.0				$14.0	10.0	7.0
711130 Musical Groups and Artists	1.1	16.0	1.3	6.8	87.6	0.728		
	5.0	7.0	10.0			$14.0	10.0	7.0
711190 Other Performing Arts Companies	2.5	227.4		64.6	156.4	0.867		
	14.0	35.5			7.0	$35.5	25.5	7.0
711211 Sports Teams and Clubs	25.1	152.4	26.8	7.5	353.2	0.833		
	35.5	35.5	35.5			$30.0	35.5	7.0
711212 Race Tracks	13.4	162.3	11.8	30.5	624.5	0.886		
	35.5	35.5	35.5			$35.5	35.5	7.0
711219 Other Spectator Sports	1.3	20.1		14.5	124.1	0.727		
	7.0	7.0				$14.0	10.0	7.0
711310 Promoters of Performing Arts, Sports and Similar Events with Facilities	4.2	69.7	5.7	37.6	920.7	0.852		
	25.5	19.0	35.5			$30.0	30.0	7.0
711320 Promoters of Performing Arts, Sports and Similar Events without Facilities	1.6	32.5		24.8	393.5	0.756		
	10.0	10.0				$19.0	14.0	7.0
711410 Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	1.4	25.2		16.8	207.1	0.736		
	7.0	7.0				$14.0	10.0	7.0
711510 Independent Artists, Writers, and Performers	0.6	7.5		3.1	100.4	0.581		
	5.0	5.0				$5.0	5.0	7.0
712110 Museums	2.0	39.8	6.8	11.8	270.7	0.823		
	10.0	10.0	35.5			$30.0	25.5	7.0
712120 Historical Sites	0.7	6.8		18.7	34.1	0.634		
	5.0	5.0				$5.0	5.0	7.0
712130 Zoos and Botanical Gardens	5.1	42.8	12.7	19.1	133.0	0.804		
	30.0	14.0	35.5			$25.5	25.5	7.0
712190 Nature Parks and Other Similar Institutions	1.1	7.9		29.5	43.9	0.654		
	5.0	5.0				$5.0	5.0	7.0
713110 Amusement and Theme Parks	30.5	633.7	36.6	70.7	2,101.3	0.926		
	35.5	35.5	35.5		35.5	$35.5	35.5	7.0
713120 Amusement Arcades	0.7	9.1	0.6	16.5	68.3	0.598		
	5.0	5.0	5.0			$5.0	5.0	7.0
713210 Casinos (except Casino Hotels)	67.0	189.2	54.4	15.9	660.0	0.638		
	35.5	35.5	35.5			$5.0	25.5	7.0
713290 Other Gambling Industries	5.6	74.6		18.4	395.0	0.850		
	30.0	19.0				$30.0	30.0	7.0
713910 Golf Courses and Country Clubs	1.9	8.3	3.1	6.6	347.7	0.640		
	10.0	5.0	30.0			$5.0	14.0	7.0
713920 Skiing Facilities	6.6	64.0	8.2	41.9	236.5	0.817		
	35.5	19.0	35.5		7.0	$25.5	25.5	7.0

713930	Marinas	1.0	3.3	1.4	3.0	30.7	0.538	7.0		7.0
		5.0	5.0	14.0			$5.0			
713940	Fitness and Recreational Sports Centers	0.8	18.2	0.8	15.5	831.8	0.711	7.0		7.0
		5.0	7.0	7.0			$10.0			
713950	Bowling Centers	0.9	22.8	0.8	22.1	188.0	0.543	7.0		7.0
		5.0	7.0	7.0			$5.0			
713990	All Other Amusement and Recreation Industries	0.5	3.0	0.4	5.7	105.0	0.499	5.0		7.0
		5.0	5.0	5.0			$5.0			

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly small businesses much smaller than the current size standards that use the SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 71, Arts, Entertainment, and Recreation, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 4, Summary of Size Standards Analysis, below, summarizes the results of SBA analyses of size standards from Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), above. The results support increases in size standards in 17 industries, decreases in five industries, and no change in three industries.

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS Industry code	NAICS Industry title	Current size standard ($ million)	Calculated new size standard ($ million)
711110	Theater Companies and Dinner Theaters	$7.0	$19.0
711120	Dance Companies	7.0	10.0
711130	Musical Groups and Artists	7.0	10.0
711190	Other Performing Arts Companies	7.0	25.5
711211	Sports Teams and Clubs	7.0	35.5
711212	Race Tracks	7.0	35.5
711219	Other Spectator Sports	7.0	10.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	7.0	30.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	7.0	14.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	7.0	10.0
711510	Independent Artists, Writers, and Performers	7.0	5.0
712110	Museums	7.0	25.5
712120	Historical Sites	7.0	5.0
712130	Zoos and Botanical Gardens	7.0	25.5
712190	Nature Parks and Other Similar Institutions	7.0	5.0
713110	Amusement and Theme Parks	7.0	35.5
713120	Amusement Arcades	7.0	5.0
713210	Casinos (except Casino Hotels)	7.0	25.5
713290	Other Gambling Industries	7.0	30.0
713910	Golf Courses and Country Clubs	7.0	14.0
713920	Skiing Facilities	7.0	25.5
713930	Marinas	7.0	7.0
713940	Fitness and Recreational Sports Centers	7.0	7.0
713950	Bowling Centers	7.0	7.0
713990	All Other Amusement and Recreation Industries	7.0	5.0

However, lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate is still high at 8.2 percent in June 2012 and is forecast to remain around this level at least through the end of 2012. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

Reducing size standards based solely on analytical results would decrease the number of firms that could participate in Federal financial and procurement assistance for small businesses. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA has decided not to propose reducing the size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards. As stated previously, the Small Business Act requires the Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant to establishing small business size standards. SBA, nevertheless, invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to

stimulate the economy and encourage job growth through the Recovery Act and the Jobs Act. Therefore, for those five industries for which analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Thus, of the 25 industries in NAICS Sector 71 that were reviewed in this proposed rule, SBA proposes to increase size standards for 17 industries and retain the current size standards for eight industries. Industries for which SBA has proposed to increase their size standards and proposed size standards are in Table 5, Summary of Proposed Size Standard Revisions, below.

In addition, not lowering size standards in NAICS Sector 71 is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, (October 21, 2009)) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, (October 6, 2010)). It is also consistent with the Agency's recently issued proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) for NAICS Sector 54, Professional, Scientific and Technical Services, and proposed rules for NAICS Sector 54, Professional, Technical, and Scientific Services (76 FR 14323 (March 16, 2011)), NAICS Sector 48–49, Transportation and Warehousing (76 FR 27935 (May 13, 2011)), NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), and NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule. On those proposed rules, SBA received very few comments stating that the lower size standard should be adopted rather than retaining the current size standard. In those cases, SBA carefully evaluated those comments along with others received on that industry's size standard before making a final decision.

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS Code	NAICS Industry title	Current size standard ($ million)	Proposed size standard ($ million)
711110	Theater Companies and Dinner Theaters	$7.0	$19.0
711120	Dance Companies	7.0	10.0
711130	Musical Groups and Artists	7.0	10.0
711190	Other Performing Arts Companies	7.0	25.5
711211	Sports Teams and Clubs	7.0	35.5
711212	Race Tracks	7.0	35.5
711219	Other Spectator Sports	7.0	10.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	7.0	30.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	7.0	14.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	7.0	10.0
712110	Museums	7.0	25.5
712130	Zoos and Botanical Gardens	7.0	25.5
713110	Amusement and Theme Parks	7.0	35.5
713210	Casinos (except Casino Hotels)	7.0	25.5
713290	Other Gambling Industries	7.0	30.0
713910	Golf Courses and Country Clubs	7.0	14.0
713920	Skiing Facilities	7.0	25.5

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 71, Arts, Entertainment, and Recreation, for which it has proposed to increase size standards, no firm at or below the proposed size standard is large enough to dominate its field of operation. At the proposed size standards, if adopted, the small business shares of total industry receipts among those industries vary from less than 0.1 percent to 2.4 percent, with an average of 0.5 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on its industry.

Request for Comments

SBA invites public comments on the proposed rule, especially on the following issues.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry. SBA also seeks feedback and suggestions on alternative size standards, if they would be more appropriate, including whether an employee based size standard for certain industries or exceptions is a more suitable measure of size, and if so, what that employee level should be.

3. The SBA's proposed size standards are based on its evaluation of five primary factors: Average firm size, average assets size (a proxy for startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size, and the level and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider in assessing industry characteristics when evaluating or revising size standards. SBA also seeks information on relevant data sources, if available, that it should consider.

4. SBA gives equal weight to each of the five primary factors for all industries. SBA seeks feedback on whether it should continue to give equal weight to each factor or whether it

should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

5. For some industries, based on evaluation of industry data, SBA proposes to increase the existing size standards by a large amount (such as NAICS 711211, 711212, 711310, 713110, and 713290), while for others the proposed increases are modest. SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

6. For industries for which the analytical results would support lowering their current size standards, SBA has proposed to retain the current size standards. SBA invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current size standards for those industries in view of current economic conditions and other relevant factors.

7. To simplify size standards, SBA has established or proposed common size standards for closely related industries in other NAICS Sectors. Based on SBA's analysis of the industry data, too much variation exists among the industries in NAICS Sector 71 to propose a common size standard for most industries. Therefore, for industries reviewed in this proposed rule, SBA has proposed size standards based on an analysis of each specific industry. SBA welcomes comments on whether it should adopt common size standards for certain industries in NAICS Sector 71, and if so, how those industries are related in a way to require a common size standard.

8. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as seen in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standards methodology and its proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a ''major rule,'' however, under the Congressional Review Act, (5 U.S.C. 800).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the proposed size standards revisions for a number of industries in NAICS Sector 71, Arts, Entertainment, and Recreation, will better reflect the economic characteristics of small businesses and the Federal government marketplace. The SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 17 industries for which SBA has proposed increasing size standards, SBA estimates that about 1,450 additional firms will obtain small business status and become eligible for these programs. That number is 1.3 percent of the total number of firms that are classified as small under the current standards in all 25 industries in NAICS Sector 71 covered by this proposed rule. If adopted as proposed, this would increase the small business share of total industry receipts in those industries from about 35 percent under the current size standards to 43 percent.

Three groups will benefit from these proposed size standards, if they are adopted as proposed: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

During fiscal years 2008–2010, 45 percent of Federal contracting dollars spent in all industries in NAICS Sector 71 were accounted for by the 17 industries for which SBA has proposed to increase size standards. Given the limited Federal contracting activity in that Sector, proposed revisions would

have minimal impacts on small business contracting opportunities. SBA estimates that additional firms gaining small business status under the proposed size standards could potentially obtain Federal contracts totaling up to $5 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB and SDVO SBC Programs, and other unrestricted procurements. The added competition for many of these procurements could also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Business and 504 Loan Programs, based on the 2008–2010 data, SBA estimates that about 15 to 20 additional loans totaling about $4 million to $6 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate their exact number and total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it similarly difficult to quantify the exact impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that those 1,450 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities; additional firms seeking SBA guaranteed lending programs; additional firms eligible for enrollment in the Central Contractor Registration's (CCR) Dynamic Small Business Search database; and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVO SBC, or SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

Additionally, the costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices. In addition, higher costs may result when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The proposed size standards may have distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since those firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the number of contracts transferred from large and from currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The proposed revisions to the existing size standards for Industries in NAICS Sector 71, Arts, Entertainment, and Recreation, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to the small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributions impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA presented its size standards methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with representatives from various industry groups and individual businesses to obtain their feedback on its methodology and other size standards issues. SBA also presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation also included information on latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 71, Arts, Entertainment, and Recreation, is consistent with EO 13563, Section 6 calling for retrospective analyses of existing rules. As discussed previously, the last overall

review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that this rule will not impose any new reporting or recordkeeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 71, Arts, Entertainment, and Recreation. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, as well as assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small entities to which the rule will apply?; (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Most of the size standards in NAICS Sector 71, Arts, Entertainment, and Recreation, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support revisions to current size standards for some industries. Based on its analysis of the latest data available, SBA believes that the revised size standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 1,450 additional firms will become small because of increases in size standards in 17 industries. That represents 1.3 percent of the total number of firms that are classified as small under the current size standards in all 25 industries in NAICS Sector 71 covered by this proposed rule. This will result in an increase in the small business share of total industry receipts for this Sector from about 35 percent under the current size standards to about 43 percent under the proposed size standards. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms have lost their small business eligibility and find it difficult to compete with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the current size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, recordkeeping and other compliance requirements of the rule?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses but does not impose a regulatory burden as they neither regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's

Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''711110'', ''711120'', ''711130'', ''711190'', ''711211'', ''711212'', ''711219'', ''711310'', ''711320'', ''711410'', ''712110'', ''712130'', ''713110'', ''713210'', ''713290'', ''713910'', and ''713920'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

Small Business Size Standards by NAICS Industry

NAICS Codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
711110	Theater Companies and Dinner Theaters	$19.0	
711120	Dance Companies	10.0	
711130	Musical Groups and Artists	10.0	
711190	Other Performing Arts Companies	25.5	
711211	Sports Teams and Clubs	35.5	
711212	Race Tracks	35.5	
711219	Other Spectator Sports	10.0	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	30.0	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	14.0	
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	10.0	
*	* * * * *	*	*
712110	Museums	25.5	
*	* * * * *	*	*
712130	Zoos and Botanical Gardens	25.5	
*	* * * * *	*	*
713110	Amusement and Theme Parks	35.5	
*	* * * * *	*	*
713210	Casinos (except Casino Hotels)	25.5	
713290	Other Gambling Industries	30.0	
713910	Golf Courses and Country Clubs	14.0	
713920	Skiing Facilities	25.5	
*	* * * * *	*	*

Dated: February 28, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–17442 Filed 7–17–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0732; Directorate Identifier 2012–CE–022–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all PILATUS AIRCRAFT LTD. Models PC 12, PC 12/45, PC 12/47, and PC 12/47E airplanes that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to incorporate new

revisions into the Limitations section, Chapter 4, of the FAA-approved maintenance program (e.g., maintenance manual). The limitations were revised to include an inspection of the wing main spar fastener holes at rib 6 for cracks. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 4, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH 6371 STANS, Switzerland; telephone: +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; Internet: *http://www.pilatus_aircraft.com* or email: *SupportPC12@pilatus_ aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329 4059; fax: (816) 329 4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0732; Directorate Identifier 2012–CE–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 1, 2009, we issued AD 2009–14–13, Amendment 39–15963 (74 FR 34213, July 15, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–14–13, Amendment 39–15963 (74 FR 34213, July 15, 2009), Pilatus Aircraft Ltd. has issued revisions to the Limitations section of the airplane maintenance manual to include an inspection of the wing main spar fastener holes at rib 6 for cracks.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2012–0099, dated June 8, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The mandatory instructions and airworthiness limitations applicable to the Structure and Components of the PC–12 are specified in the Aircraft Maintenance Manual (AMM) under Chapter 4. Prompted by a crack found on one wing of the aeroplane fleet leader, a more restrictive airworthiness limitation was introduced, in that manual, for the inspection of the main spar rib 6 strap fastener.

These documents include the maintenance instructions and/or airworthiness limitations developed by Pilatus Aircraft Ltd. and approved by EASA. Failure to comply with these instructions and limitations could potentially lead to unsafe condition.

For the reasons described above, this AD requires the implementation of more restrictive maintenance instructions and/or airworthiness limitations. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Pilatus Aircraft Ltd. has issued Structural and Component Limitations—Airworthiness Limitations, document 12 B 04 00 00 00A 000A A, dated January 27, 2012; and Structural, Component and Miscellaneous—Airworthiness Limitations, document 12 A 04 00 00 00A 000A A, dated January 27, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD would affect 678 products of U.S. registry. We also estimate that it would take about 3.5 work hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work hour. Required parts would cost about $300 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $405,105, or $597.50 per product.

In addition, we estimate that any necessary follow on actions would take about 6 work hours and require parts costing $4,000, for a cost of $4,510 per product. We have no way of determining the number of products that may need these actions. We also estimate that it would take about 12 work hours per product to comply with the addition of the wing inspection requirements of this proposed AD. The average labor rate is $85 per work hour.

Based on these figures, we estimate the cost of the proposed wing inspection on U.S. operators to be $691,560, or $1,020 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing approximately $5,000, for a cost of $5,595 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority. We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15963 (74 FR 34213, July 15, 2009), and adding the following new AD:

PILATUS AIRCRAFT LTD.: Docket No. FAA–2012–0732; Directorate Identifier 2012–CE–022–AD.

(a) Comments Due Date

We must receive comments by September 4, 2012.

(b) Affected ADs

This AD supersedes AD 2009–14–13, Amendment 39–15963 (74 FR 34213, July 15, 2009).

(c) Applicability

This AD applies to Pilatus Aircraft LTD. Models PC 12, PC 12/45, PC 12/47, and PC–12/47E airplanes, all manufacturer serial numbers (MSNs), certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 05: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to incorporate new revisions into the Limitations section, Chapter 4, of the FAA-approved maintenance program (e.g., maintenance manual). The limitations were revised to include an inspection of the wing main spar fastener holes at rib 6 for cracks. These actions are required to ensure the continued operational safety of the affected airplanes.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) For Models PC 12 and PC 12/45 airplanes, MSNs 101 through 299: Within the next 100 hours time in service (TIS) after August 19, 2009 (the effective date retained from AD 2009–14–13, Amendment 39–15963 (74 FR 34213, July 15, 2009)) or 1 year after August 19, 2009 (the effective date retained from AD 2009–14–13), whichever occurs first, replace the torque tube P/N 532.50.12.047 with torque tube P/N 532.50.12.064 following PILATUS AIRCRAFT LTD. Service Bulletin No: 32 021, dated November 21, 2008.

(2) For all airplanes: As of the effective date of this AD, do not install torque tube P/N 532.50.12.047.

(3) For all airplanes: Before further flight after the effective date of this AD, insert Structural, Component and Miscellaneous—Airworthiness Limitations, document 12 A 04 00 00 00A 000A A, dated January 27, 2012 (for Models PC 12, PC 12/45, PC 12/47), and Structural and Component Limitations—Airworthiness Limitations, document 12 B 04 00 00 00A 000A A, dated January 27, 2012 (for Model PC 12/47E), into the Limitations section of the FAA approved maintenance program (e.g., maintenance manual). The limitations section revision does the following:

(i) Establishes an inspection of the wing main spar fastener holes at rib 6,

(ii) Specifies replacement of components before or upon reaching the applicable life limit, and

(iii) Specifies accomplishment of all applicable maintenance tasks within certain thresholds and intervals.

(4) For all airplanes: If no compliance time is specified in the documents listed in paragraph (f)(3) of this AD when doing any corrective actions where discrepancies are found as required in paragraph (f)(3)(iii) of this AD, do these corrective actions before further flight after doing the applicable maintenance task.

(5) For all airplanes: During the accomplishment of the actions required in paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD, if a discrepancy is found that is not identified in the documents listed in paragraph (f)(3) of this AD, before further flight after finding the discrepancy, contact Pilatus Aircraft Ltd. at the address specified in paragraph (h) of this AD for a repair scheme and incorporate that repair scheme.

Note 1 to paragraph (f)(3) of this AD: Structural, Component and Miscellaneous—Airworthiness Limitations, document 12 A 04 00 00 00A 000A A, dated January 27, 2012 (for Models PC 12, PC 12/45, PC 12/47) is part of Chapter 4 of the Airplane Maintenance Manual (AMM) report 02049, issue 25, dated January 25, 2012.

Note 2 to paragraph (f)(3) of this AD: Structural and Component Limitations—Airworthiness Limitations, document 12 B 04 00 00 00A 000A A, dated January 27, 2012 (for Model PC 12/47E) is part of Chapter 4 of the AMM report 02300, issue 8, dated January 25, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329 4059; fax: (816) 329 4090; email: *doug.rudolph@faa.gov*.

(i) Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(ii) AMOCs approved for AD 2009–14–13, Amendment 39–15963 (74 FR 34213, July 15, 2009) are not approved as AMOCs for this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2012–0099, dated June 8, 2012; Structural and Component Limitations—Airworthiness Limitations, document 12 B 04 00 00 00A 000A A, dated January 27, 2012; Structural, Component and Miscellaneous—Airworthiness Limitations, document 12 A 04 00 00 00A 000A A, dated January 27, 2012; and PILATUS AIRCRAFT LTD. Service Bulletin No: 32 021, dated November 21, 2008, for related information. For service information related to this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH 6371 STANS, Switzerland; telephone: +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; Internet: *http://www.pilatus_aircraft.com* or email: *SupportPC12@pilatus_aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 5, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–17103 Filed 7–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0341; Airspace Docket No. 12–AEA–4]

Proposed Amendment of Class E Airspace; Wilkes-Barre, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Wilkes-Barre, PA, creating controlled airspace to accommodate new Standard Instrument Approach Procedures at Wilkes-Barre Wyoming Valley Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action would also recognize the name change of Hanover Township Fire Station #5 Heliport.

DATES: Comments must be received on or before September 4, 2012.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–0341; Airspace Docket No. 12–AEA–4, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0341; Airspace Docket No. 12–AEA–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0341; Airspace Docket No. 12–AEA–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Wilkes-Barre, PA providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Wilkes-Barre Wyoming Valley Airport. Controlled airspace extending upward from 700 feet above the surface would be created for the safety and management of IFR operations at the airport. Also, the heliport formerly known as Fire Station Helipad at Mercy Hospital would be changed to Hanover Township Fire Station #5 Heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Wilkes-Barre Wyoming Valley Airport, Wilkes-Barre, PA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Wilkes-Barre, PA [Amended]

Wilkes-Barre/Scranton International Airport
(Lat. 41°20′19″ N., long. 75°43′24″ W.)
BARTY LOM
(Lat. 41°16′37″ N., long. 75°46′32″ W.)
Wilkes-Barre/Scranton International ILS Localizer Northeast Course
(Lat. 41°19′54″ N., long. 75°43′49″ W.)
Wilkes-Barre Wyoming Valley Airport
(Lat. 41°17′50″ N., long.. 75°51′09″ W.)
Wyoming Valley Medical Center
(Lat. 41°15′45″ N., long. 75°48′40″ W.)
ZIGAL Waypoint
(Lat. 41°16′08″ N., long. 75°48′36″ W.)
Community Medical Center, Scranton, PA
(Lat. 41°24′00″ N., long. 75°38′49″ W.)
ZESMA Waypoint
(Lat. 41°24′00″ N., long. 75°39′39″ W.)
Hanover Township Fire Station #5 Heliport
(Lat. 41°14′08″ N., long. 75°56′03″ W.)
ZIDKA Waypoint
(Lat. 41°14′14″ N., long. 75°55′12″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.7-mile radius of Wilkes-Barre/Scranton International Airport and within 3.1 miles each side of the Wilkes-Barre/Scranton International Airport Localizer southwest course extending from the BARTY LOM to 10 miles southwest of the LOM, and within 4.4 miles each side of the Wilkes-Barre/Scranton International Airport Localizer to 11.8 miles northeast of the Localizer; and within an 11.6-mile radius of Wilkes-Barre Wyoming Valley Airport, and including that airspace within a 6-mile radius of each of the Point in Space Waypoints ZIGAL, ZESMA, and ZIDKA serving the Wyoming Medical Center, the Community Medical Center, and the Hanover Township Fire Station #5 Heliport.

Issued in College Park, Georgia, on July 9, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–17500 Filed 7–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2012–F–0480]

Gruma Corporation, Spina Bifida Association, March of Dimes Foundation, American Academy of Pediatrics, Royal DSM N.V., and National Council of La Raza; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition; correction.

SUMMARY: The Food and drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 13, 2012 (77 FR 35317). The document announced that Gruma Corporation, Spina Bifida Association, March of Dimes Foundation, American Academy of Pediatrics, Royal DSM N.V., and National Council of La Raza had jointly filed a petition proposing that the food additive regulations be amended to provide for the safe use of folic acid in corn masa flour. The document was published with an error in the title of the document signer's signature. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–14263, appearing on page 35317 in the **Federal Register** of Wednesday, June 13, 2012 the following correction is made:

On page 35317, in the third column at the end of the document, Dennis M. Keefe is incorrectly listed as the ''Acting Director'' of the Office of Food Safety, Center for Food Safety and Applied Nutrition. His title is corrected to read ''Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition''.

Dated: *June 12, 2012.*

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2012–17432 Filed 7–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1206

[Docket No. ONRR–2011–0007]

Indian Oil Valuation Negotiated Rulemaking Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of Natural Resources Revenue (ONRR) announces additional meetings for the Indian Oil Valuation Negotiated Rulemaking Committee (Committee). The third through sixth meetings of the Committee will take place on August 1 and 2, September 5 and 6, October 24 and 25, and December 11 and 12, 2012, in Building 85 of the Denver Federal Center. The Committee membership includes representatives from Indian tribes, individual Indian mineral owner organizations, minerals industry representatives, and other Federal bureaus. The public will have the opportunity to comment between 3:45 p.m. and 4:45 p.m. Mountain Time on August 1, 2012; September 5, 2012; October 24, 2012; and December 11, 2012.

DATES: Wednesday and Thursday, August 1 and 2, 2012; Wednesday and Thursday, September 5 and 6, 2012; Wednesday and Thursday, October 24 and 25, 2012; and Tuesday and Wednesday, December 11 and 12, 2012. All meetings will run from 8:30 a.m. to 5:00 p.m. Mountain Time for all dates.

ADDRESSES: ONRR will hold the meetings at the Denver Federal Center, 6th Ave and Kipling, Bldg. 85 Auditorium, Lakewood, CO 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Wunderlich, ONRR, at (303) 231–3663; or (303) 231–3744 via fax; or via email *karl.wunderlich@onrr.gov*.

SUPPLEMENTARY INFORMATION: ONRR formed the Committee on December 8, 2011, to develop specific recommendations regarding proposed revisions to the existing regulations for oil production from Indian leases, especially the major portion requirement. The Committee includes representatives of parties that the final rule will affect. It will act solely in an advisory capacity to ONRR and will neither exercise program management responsibility nor make decisions directly affecting the matters on which it provides advice.

Meetings are open to the public without advanced registration on a space-available basis. Minutes of this meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado, or are available at *www.onrr.gov/Laws_R_D/IONR*. ONRR conducts these meetings under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2, Section 1 et seq.).

Dated: July 12, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–17511 Filed 7–17–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 64

RIN 2900–AO35

Grants for the Rural Veterans Coordination Pilot (RVCP)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to establish a pilot program, known as the Rural Veterans Coordination Pilot (RVCP), to provide grants to eligible community-based organizations and local and State government entities to be used by these organizations and entities to assist veterans and their families who are transitioning from military service to civilian life in rural or underserved communities. VA would use information obtained through the pilot to evaluate the effectiveness of using community-based organizations and local and State government entities to improve the provision of services to transitioning veterans and their families. Five RVCP grants would be awarded for a 2-year period in discrete rural locations pursuant to a Notice of Funds Availability (NOFA) to be published in the **Federal Register**.

DATES: Comments must be received by VA on or before September 17, 2012.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov* by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO35, Grants for the Rural Veterans Coordination Pilot (RVCP).'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Malebranche, Veterans Health Administration, Office of Interagency Health Affairs (10P5), 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 461–6001. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 5, 2010, the President signed into law the Caregivers and Veterans Omnibus Health Services Act of 2010 (2010 Act), Public Law 111–163. Section 506(a) of the 2010 Act, codified at 38 U.S.C. 523 note, requires VA to establish a pilot program to assess the feasibility and advisability of using community-based organizations and local and State government entities to:

- Increase the coordination of community, local, State, and Federal providers of health care and benefits for veterans to assist veterans who are transitioning from military service to civilian life in such transition;
- Increase the availability of high quality medical and mental health services to veterans transitioning from military service to civilian life;
- Provide assistance to families of veterans who are transitioning from military service to civilian life to help such families adjust to such transition; and
- Provide outreach to veterans and their families to inform them about the availability of benefits and connect them with appropriate care and benefit programs.

In addition, section 506(c)(2) instructs VA to carry out the program in five locations to be selected by the Secretary of Veterans Affairs. In selecting locations, section 506 requires VA to consider sites in:

- Rural areas;
- Areas with populations that have a high proportion of minority group representation;
- Areas with populations that have a high proportion of individuals who have limited access to health care; and
- Areas that are not in close proximity to an active duty military installation.

This rulemaking proposes regulations to implement this statutory mandate by

establishing a 2-year pilot program to be known as the ''Rural Veterans Coordination Pilot'' and by its acronym ''RVCP.''

Under the RVCP, VA would award grants to eligible entities that propose to provide assistance to certain veterans and their families who are making the transition from military service to civilian life in rural or underserved communities; specifically, veterans covered under the pilot program are those who were discharged or released from service up to 2 years prior to the date funds are awarded to the grantee.

In section 506(g) of the 2010 Act, Congress required VA to report on the experience of the RVCP, including an assessment of its benefits to veterans and the advisability of continuing the pilot program. Because VA must make this report within 180 days following the completion of this pilot, VA proposes to offer grants that would be available for the 2-year period of the pilot and to require strict adherence to the reporting deadlines established.

64.0 Purpose and Scope

Proposed § 64.0 would set forth the purpose of the RVCP and the scope of part 64. The purpose of the RVCP is to provide grants to community-based organizations and local and State government entities to be used to assist veterans who are transitioning from military service to civilian life in rural or underserved communities and the families of such veterans. Proposed part 64 would apply only to the RVCP.

64.2 Definitions

Proposed § 64.2 would define terms applicable to § 64.0 through § 64.18 and to the NOFA that will be published in the **Federal Register**, as required by proposed § 64.8.

We propose to define ''applicant'' as an eligible entity that submits an application for a grant as announced in a NOFA. Any eligible entity would become an applicant by submitting an application.

''Community-based organization'' would be defined as a group that represents a community or a significant segment of a community and that is engaged in meeting community needs. This definition would ensure that grant funds are used to reach smaller groups that are able to operate within communities and to reach veterans and/or their families in areas that are harder for VA to reach through existing means, which is the Congressional intent behind section 506.

An ''eligible entity'' would be defined as a community-based organization or a local or State government entity. These are the organizations and entities identified in section 506 of the 2010 Act as the possible recipients of grants under the RVCP. An eligible entity would be identified as the legal entity whose employer identification number is on the Application for Federal Assistance (SF 424), even if only a particular component of the entity is applying for the RVCP grant. This would help ensure the integrity of the program because it would enable VA to evaluate the applicant organization as part of the larger entity, and would help ensure a broader distribution of grant funds because VA would not award more than one grant to any one eligible entity.

A ''grantee'' would be defined as a recipient of an RVCP grant, in other words, an applicant that is awarded an RVCP grant.

We propose to define having ''limited access to health care'' as residing in an area identified by the Health Resources and Services Administration of the U.S. Department of Health and Human Services (HHS) as being a medically underserved area or having a medically underserved population. HHS defines medically underserved areas or populations as having ''too few primary care providers, high infant mortality, high poverty and/or high elderly population.'' Areas that meet these criteria can be found on HHS's list of medically underserved communities published on their interactive Web site at *http://muafind.hrsa.gov.* This definition would ensure that grant funds assist persons in the types of areas contemplated by section 506 of the 2010 Act, i.e., ''areas with populations that have a high proportion of individuals who have limited access to health care.''

We propose to define ''local government'' as a county, municipality, city, town, township, or regional government or its components. This definition is consistent with the plain language of section 506.

For purposes of the RVCP, VA proposes to use the definition of ''[m]inority group member'' found at 38 U.S.C. 544(d). This definition includes individuals who are Asian American, Black, Hispanic, Native American (including American Indian, Alaskan Native, and Native Hawaiian), or Pacific-Islander American. There is no reason to interpret ''minority group'' as used in section 506 of the 2010 Act in a manner other than as used for other title 38 programs or activities.

A ''Notice of Funds Availability,'' or ''NOFA,'' would be defined as the notice published by VA in the **Federal Register** alerting eligible entities of the availability of RVCP grants and containing important information about the RVCP grant application process, in accordance with proposed § 64.8.

A ''participant'' would be defined as a veteran or a member of a veteran's family who receives services for which an RVCP grant is awarded.

To define ''rural,'' VA proposes to rely on information compiled and provided by the U.S. Census Bureau in identifying rural communities. The Census Bureau's classification of ''rural'' consists of all territory, population, and housing units located outside of urbanized areas and urban clusters. Interested parties are referred to the Census Bureau's Web site (*http://www.census.gov/geo/www/ua/ua_2k.html*) for additional information. Section 506 offers no specialized meaning of the term, and therefore, we believe it is rational to use the definition provided by the U.S. Census Bureau. This definition would ensure that grant funds assist persons in the types of areas contemplated by section 506(c)(2)(A) of the 2010 Act.

The ''Rural Veterans Coordination Pilot,'' or ''RVCP,'' refers to the pilot grant program authorized by section 506 of the 2010 Act.

We propose to define ''State government'' as any of the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State government. This definition is consistent with the plain language meaning of the term and its use in section 506 of the 2010 Act.

We propose to define ''underserved communities'' as those areas that have a high proportion of minority group representation, have a high proportion of individuals who have limited access to health care, or have no active duty military installation that is reasonably accessible to the community. Section 506 of the 2010 Act directs VA to consider making RVCP grants available in such communities. We propose to refer to these communities collectively as ''underserved communities'' because these areas have been identified as lacking in medical and other services that are available to individuals in other areas. Use of a single term to identify these areas would make reference to them in these regulations easier and more efficient.

Section 506(c)(2)(D) requires VA to consider ''areas that are not in close proximity to an active duty military installation.'' We interpret ''close proximity'' to mean something other than a mere distance. VA recognizes that the geography surrounding any given military installation will vary, and

that geographical and transportation barriers may affect the time that it takes to reach a military installation which, by simple mileage count, may be in close proximity. For example, some rural areas are functionally more remote than others owing to issues such as geographic features (e.g., mountainous regions, lakes, major rivers) and seasonal restrictions (e.g., limited ferry service, closed roads or bridges, reduced flights). Therefore, we would refer in the definition of ''underserved communities'' to areas that ''have no active duty military installation that is reasonably accessible to the community,'' in order to emphasize that it is accessibility, not solely distance, that would be used to determine whether a particular location is appropriate for RVCP funding.

We propose to define a ''veteran who is transitioning from military service to civilian life'' as one who is leaving active military, naval, or air service in the Armed Forces to return to life as a civilian. To ensure that RVCP funds are used to assist veterans and their families who are actively transitioning, i.e., who are experiencing the acute effects of the change in lifestyle, we would limit the term to veterans who have been discharged or released from service not more than 2 years prior to the date on which an RVCP grant is awarded. In section 506, Congress directs VA to use this pilot to assess the feasibility and advisability of using these organizations and entities to assist in providing benefits and assistance to veterans and their families ''who are transitioning from military service to civilian life.'' We believe that the initial 2 years after discharge or release pose the greatest challenge to veterans and their families as they relocate and readjust to the civilian way of life.

We would use ''VA'' to refer to the U.S. Department of Veterans Affairs for purposes of ease and readability.

We propose to define a ''veteran'' as a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable. This definition is consistent with 38 U.S.C. 101(2) and the use of the term in other VA benefit programs.

We propose to define the ''veteran's family'' as those individuals who reside with the veteran in the veteran's primary residence. These individuals may include a parent, a spouse, a child, a step-family member, an extended family member, and individuals who reside in the home with the transitioning veteran but are not a member of the family of the transitioning veteran. We believe this definition is representative of the family unit of many transitioning veterans today. We do not propose to provide services under this pilot program to family members who do not reside in the veteran's primary residence, such as separated or divorced spouses, surviving spouses, or children who primarily reside with the other parent, because these individuals are less likely to be experiencing the effects of transition or may have other resources available to assist them. Moreover, we note that this definition of family is consistent with the definition set out in section 101 of the 2010 Act governing assistance and support services for caregivers (see 38 U.S.C. 1720G(d)(3)).

64.4 RVCP Grants—General

Proposed § 64.4 would provide general information pertaining to RVCP grants. Section 506(c)(1) of the 2010 Act directs VA to carry out the RVCP in five locations. To meet this requirement, in § 64.4(a) and (b), we propose to award a total of five RVCP grants to eligible entities and to limit the awards to one grant per eligible entity and one grant for each pilot project location. For this purpose we hope to gather evidence on the effectiveness of community-based organizations and local and State government entities in various locations in increasing the availability and coordination of care and benefits available to transitioning veterans and their families at all levels (i.e., at the local, State, and Federal levels) and providing assistance and outreach services to these veterans and their families to help them transition successfully to civilian life.

In proposed § 64.4(c), we propose that each RVCP grant award would be for a maximum period of 2 years, which is the length of the RVCP under section 506 of the 2010 Act. To maximize the effectiveness of the pilot, we propose that the date on which the 2 years would begin would be the date on which the RVCP grants are awarded. No extensions or renewals would be available as the RVCP would end 2 years after the date the awards are granted.

In proposed § 64.4(d), we state that a grantee would not be required to provide matching funds as a condition of receiving an RVCP grant. Our goal with this pilot is, in part, to assess how eligible entities in target areas that currently lack the resources needed to assist transitioning veterans and their families might be able to provide them with needed assistance were additional resources available. Requiring matching funds could negate the ability of otherwise eligible entities to qualify for RVCP grants.

Proposed paragraph (e) would specify that no participant would be charged a fee for any services provided by a grantee under the RVCP grant and would not be required to participate in any other activities sponsored by a grantee as a condition of receiving assistance under the RVCP grant. Grantees would be expected to provide the services for which the RVCP grants are made to the participant without charge or condition.

64.6 Permissible Uses of RVCP Grants

In proposed § 64.6, we would define the permissible uses of RVCP grants. In general, as provided in section 506 of the 2010 Act, RVCP grants would be used to increase the coordination of health care and benefits for transitioning veterans, to increase the availability of high quality medical and mental health services to transitioning veterans, to provide assistance to families of transitioning veterans, and to provide outreach to veterans and their families. We would provide specific examples of each of these purposes in § 64.6(a). These examples are intended to be guidance to potential applicants and not an exclusive list. We propose to require that at least 90 percent of the RVCP grant be used for these purposes. The reason that we provide examples is to offer guidance; VA would encourage highly innovative RVCP grant projects and would allow use of grant funds to evaluate new strategies in each of these areas, and we reemphasize that we do not intend these examples to limit applicants' attempts to provide creative, innovative ways to reach the goals stated in paragraphs (a)(1) through (4).

Under proposed § 64.6(b), grantees would be required to limit the use of the RVCP funds for the indirect costs of doing business to no more than 10 percent of the RVCP grant awarded to the grantee. These costs would include those expenses of doing business that are not identified directly with the services provided using the RVCP grant but are necessary for the general operation of the grantee organization. We recognize that applicants would incur such costs to fulfill any proposal. Limiting the amount that would be used to cover these costs would ensure that RVCP grants are used primarily for the benefit of transitioning veterans and their families. We believe 10 percent of the total grant awarded is fair and reasonable because we anticipate that many of the entities who would apply for these grants are already actively working to assist veterans and their families in the target communities, but

they may lack the funding necessary to be fully effective or to increase the reach of their services. In these cases, by allowing 10 percent to be used for indirect costs, we provide a mechanism for these entities to increase their services and recover any additional costs of recordkeeping and reporting necessitated by the terms of the grant award.

64.8 Notice of Funds Availability (NOFA)

Proposed § 64.8 would describe the method VA would use to announce the availability of the five RVCP grants. VA proposes to publish a NOFA in the **Federal Register** when funds are available to award RVCP grants. The NOFA would direct eligible entities to the Grants.gov portal, which is used for Federal grant programs, and would indicate the forms available on that site that applicants would be required to use. The NOFA also would specify the date, time, and place for submitting completed RVCP grant applications, the estimated amount of funds that would be available for all RVCP grants, and the maximum amount available for an RVCP grant to a single entity. The NOFA would state the points required for each category listed in § 64.12 and the minimum number of total points necessary for an application to qualify for potential funding, and the dates by which scoring would be completed and applicants notified. VA would state in the NOFA the timeframes and manner in which payments would be made to successful applicants. The NOFA would include any additional information necessary to complete the application process for an RVCP grant. To ensure that applicants have all the resources necessary to them, VA would include information in the NOFA informing eligible entities how to contact VA for clarification or assistance.

64.10 Application

RVCP grant application procedures are addressed in proposed § 64.10. As stated in proposed § 64.8, VA would provide relevant information about an available RVCP grant by publishing a NOFA in the **Federal Register**. Under proposed § 64.10(a), applications would be accepted only through the Grants.gov Web site. This is the easiest and most efficient way to process grant applications and should be familiar to many of the types of eligible entities likely to submit an application.

In proposed § 64.10(b), we propose to define the elements of a complete application. In general, a complete application requires the submission of information contained in this section, using the forms identified in the NOFA and available through Grants.gov.

Proposed § 64.10(b)(1) through (b)(5) would require submission of detailed information on the project that is being proposed. In particular, applicants would be required to describe the services to be provided, including which of the permissible uses in § 64.6(a) the proposed services are intended to address, the need for those services in the proposed project location, and why the location qualifies as rural or an underserved community. The applicants also would be required to provide certain information about their experience in providing the proposed services, and how they would monitor and evaluate their compliance. These elements are critical to VA's ability to determine whether the applicant is proposing a project that would assist veterans and their families as they transition from military service to civilian life, particularly those who are located in rural and underserved areas and most in need of this assistance.

In proposed § 64.10(b)(6), we would require documentation of the applicant's ability to administer the project, given the limitation on use of funds from the RVCP grant for indirect costs of doing business which, under proposed § 64.6(b), can be only up to 10 percent of the total grant amount. In light of this limitation, VA would require each applicant to provide documentation of its capacity to manage the project, including a plan to continuously assess participant need for the services proposed and the ability to respond to any changes by adjusting the services provided within the scope of the project. Applicants would also be required to allow coordination and customization of services to meet the identified need of the participants. Applicants must also clearly define how they plan to comply with the requirements of the RVCP, including the submission of timely reports. Requiring the applicants to submit this very detailed information would provide evidence not only of their ability to follow through on the proposed project, but also the extent to which they have considered all aspects of planning and providing the proposed services and the necessary data management to facilitate timely and accurate reports. In proposed § 64.10(b)(7), we would require that applicants disclose any assistance received from or any consultation with VA or Veterans Service Organizations (VSO) in the preparation of the RVCP grant application. Because successful applications for grants under the program would depend on the applicant having a working knowledge of VA health care and benefits and the means by which those benefits are delivered, we realize that applicants may need to work closely with numerous sources, including local VSOs, VA Regional Offices, and VA Medical Centers, as well as the RVCP office, in designing their proposals. Such interactions may help applicants to better understand the scope of VA benefits available to veterans and their families, to identify areas that need improvement in the locations they propose to serve, and to identify necessary procedures and documentation that would be required to assist transitioning veterans and their families access appropriate care and benefits. Notwithstanding the noted value of such contact, we would require that all direct communication with VA or VSOs in preparation of the application must be disclosed in the application packet to assist RVCP managers in identifying any potential conflict of interest on the part of application reviewers. These disclosures would also help reviewers assess the applicant's readiness and likelihood of project success.

The NOFA would also provide the Internet address of VA's RVCP technical assistance Web page and VA fully expects that applicants would take advantage of this assistance to design the strongest possible proposals to reasonably meet the expectations of the RVCP. We are not seeking disclosure of Web site access (either RVCP Web site or other VA developed public sites).

Paragraph (b)(8) would allow VA to specify additional requirements in the NOFA. This would help us tailor the NOFA as VA deems necessary.

64.12 Scoring and Selection

In proposed § 64.12, we would establish general scoring criteria and the method for selection of grantees. Applications must be complete, as set forth in § 64.10(b), and received by the deadline stated in the NOFA. Scores for each application would be based on the criteria set forth in proposed paragraphs (a)(1) through (a)(6). These proposed categories are weighted according to their importance in ensuring the successful development and operation of a project that meets the intent of the RVCP. A maximum of 100 points would be possible and the decision of VA regarding scoring and selection would be final.

Applicants would be scored, under proposed § 64.12(a)(1), on experience in providing the services that are proposed in the application. An applicant may be awarded up to 10 points by providing sufficient information to assure VA of

its established ability to provide the proposed services to the public and/or to veterans and their families. Although we are encouraging innovation, we believe that it is appropriate to offer points to applicants who have documented success and experience in the provision of the proposed services.

In proposed § 64.12(a)(2), VA proposes to award up to 10 points to applicants who clearly identify the need for the proposed project in the target location. Projects that provide thoroughly defined and researched plans which are innovative and avoid repetition of existing projects or ideas would be scored more favorably. The purpose of this criterion is to help ensure that grants are offered to applicants who understand the specific needs of their target location beyond the basic descriptions of the intended participants that may be described in the NOFA or in general materials describing the applicant's organization.

Proposed paragraph § 64.12(a)(3), in which applications may be awarded up to 40 points, would evaluate the applicant's concept and plan for successful implementation of the proposed project. The project description must provide realistic estimates of time, staffing, and material needs to provide the proposed services.

Applicants must design a project which focuses on one or more of the four permissible uses of the RVCP for transitioning veterans stated in § 64.6 (increasing the coordination of health care for veterans; increasing the availability of high quality medical and mental health services; providing assistance to transitioning families; and/or outreach to transitioning veterans and their families). Applicants are scored based on how effectively the proposed project would determine and address the local needs of transitioning veterans in the location to be served without duplicating effective programs already in place.

Under proposed § 64.12(a)(4), VA would evaluate and award up to 10 points for the applicant's plan of self-evaluation and monitoring during the grant period, as required in § 64.10(b)(5). Self-evaluation and monitoring would help VA ensure that the RVCP funds are being used appropriately and would also assist in our overall assessment of the pilot program required by section 506(g) of the 2010 Act.

In proposed § 64.12(a)(5), up to 10 points would be available for organizational financial fitness. This information is important to ensure that funds are not provided to an organization that is financially unstable or to an organization that has been unable to manage funds, including Federal funds, in the past. The limited duration and amounts of RVCP grants available for this pilot are not intended to help ''grow'' a local organization but rather to reward innovative projects submitted by local organizations that are already established, stable, and immediately ready to provide services to veterans and their families. At the same time, however, we believe that other application requirements, such as the complexity of the plan concept in paragraph (a)(3), would also provide information concerning the applicant's ability to complete the project and, therefore, we offer only ten points for this criterion.

Proposed paragraph § 64.12(a)(6) would provide up to 20 points for the proposed project location identified. VA would evaluate the applicant's proposed location and the documentation provided to ensure that the location is rural or underserved, as defined in § 64.2. VA is interested in identifying rural and underserved areas with an adequate population of transitioning veterans to allow a proposed grant project to demonstrate effectiveness in such an area.

In proposed § 64.12(b), we describe the selection process. Using the scoring criteria provided in § 64.12(a), VA would score all complete applications submitted by the deadline provided in the NOFA. All applications that receive at least the minimum total points and minimum points per category as stated in the NOFA would be ranked from highest to lowest based on total points received. VA would award one RVCP grant to the applicant with the highest total score. Each successive grant would be awarded to the application with the next highest total, provided the applicant is a unique eligible entity and the proposed project is in a different project location than all previously awarded RVCP grants. If the next highest ranked application was submitted by an entity that was already awarded an RVCP grant or proposes to deliver services in the same or overlapping location as a previously awarded grant, VA would pass over that application and evaluate the next highest ranking application until an application submitted by a unique entity and proposing to serve a different location is found. VA would repeat this until all five RVCP grants have been awarded.

64.14 RVCP Grant Agreement

Proposed § 64.14(a) would require VA to draft a grant agreement that would be executed by VA and the grantee.

Proposed paragraph (b) would set forth the elements of the agreement. Under paragraph (b)(1), the agreement would require the grantee to operate the project in accordance with the provisions of the RVCP, as set forth in this rulemaking, and in accordance with the terms of the grant agreement. Proposed paragraphs (b)(2)(i) and (b)(2)(ii) would recognize that VA grants awarded to local and State entities and to non-profit entities are also governed by 38 CFR parts 43 and 49, respectively, 2 CFR parts 25 and 170, and applicable Office of Management and Budget (OMB) regulations and circulars. Particularly, the determination of allowable costs which may be charged to or accounted as a part of a Federally funded project is controlled by OMB Circular A–122, Cost Principles for Non-Profit Organizations (codified at 2 CFR part 230), and by OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments. These common rules provide uniform guidance and government-wide terms and conditions for the management of awards and administration of Federal grants.

Proposed § 64.14(b)(3) would require the grantee to agree to comply with any additional recordkeeping requirements, including financial records and project monitoring as described in the NOFA, to meet the needs of the RVCP. Proposed § 64.14(b)(4) would require that grantees agree to timely provide any additional information as requested by VA; for instance, VA may require additional information to complete its congressional reporting requirements or to complete its assessment of the RVCP. Timely and accurate reporting by grant recipients is a critical tool by which VA would evaluate the RVCP and, as required by section 506(g) of the 2010 Act, report to Congress on the advisability and feasibility of continuing this program.

64.16 Reporting

Proposed § 64.16 would establish grantee reporting requirements to obtain information necessary to analyze the performance of a grantee's project. Each report would include, as described in proposed § 64.16(a), a summary of the time and resources expended in outreach activities and the outreach methods used; the number and demographics of the participants served by the grantee; the types of assistance provided; a full accounting of the grant funds received during the quarter, detailing amounts expended and the balance remaining at each quarter's end; and results of the grantee's monitoring and any variations from the approved

grant project. Reports would be required quarterly, no later than 15 calendar days following the close of each Federal fiscal quarter, including the final quarter for which funds are awarded, see proposed § 64.16(b). These reports would be used to verify that grant funds were used appropriately and to assess the overall impact of the RVCP program and the advisability of continuing the pilot program.

Proposed paragraph (c) would allow VA to request other information or documentation as necessary to fully assess the success of the project or the RVCP. VA would request information to determine whether grant funds were used appropriately or to gather additional information in the event any part of the required reports submitted by a grantee is inadequate.

64.18 Recovery of Funds

Proposed § 64.18(a) would state that VA may terminate an RVCP grant and recover funds from any grantee that does not comply with the terms of the RVCP grant agreement. It would also state that VA would first notify the grantee in writing of VA's intention to recover the grant funds and afford an opportunity for the grantee to respond before making any final decision to recover the funds. The grantee would be given 30 days starting from the date of the notice to provide documentation of compliance with the RVCP grant agreement and avoid a recovery action by VA. Proposed paragraph (b) would specify that if VA makes a final decision that action would be taken to recover grant funds from a grantee, the grantee would be prohibited from receiving further grant funds from VA. These criteria would ensure appropriate use of RVCP funds, ensure the best use of RVCP funds available from VA and protect the RVCP from abuse.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

Although this rule contains provisions constituting collections of information, at 38 CFR 64.10, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for § 64.10 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 4040–0003, 4040–0004, 4040–0006, 4040–0007, 4040–0008, 4040–0009, and 4040–0010. The reports required under § 64.16 would be collected only from the five award recipients and, therefore, do not constitute a collection of information as defined in section 3502(3)(A)(i) of the Paperwork Reduction Act of 1995.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. There would be no negative economic impact on any of the eligible entities because the grantees would not be required to provide matching funds to obtain the maximum grant allowance. This pilot grant program would not impact a substantial number of small entities because only five non-renewable grants would be awarded. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

At this time there are no Catalog of Federal Domestic Assistance numbers and titles for the program affected by this regulation. Catalog of Federal Domestic Assistance numbers and titles will be obtained when the program is established on the Grants.gov Web site.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 2, 2012, for publication.

List of Subjects in 38 CFR Part 64

Administrative practice and procedure, Disability benefits, Claims, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health records, Reporting and recordkeeping requirements, Veterans.

Dated: July 13, 2012.

William F. Russo,

Deputy Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR chapter I by adding part 64 to read as follows:

PART 64—GRANTS FOR THE RURAL VETERANS COORDINATION PILOT (RVCP)

Sec.
64.0 Purpose and scope.
64.2 Definitions.
64.4 RVCP grants—general.
64.6 Permissible uses of RVCP grants.
64.8 Notice of Funds Availability (NOFA).
64.10 Application.
64.12 Scoring and selection.
64.14 RVCP grant agreement.
64.16 Reporting.
64.18 Recovery of funds.

Authority: 38 U.S.C. 501, 523 *note.*

§ 64.0 Purpose and scope.

(a) *Purpose:* The Rural Veterans Coordination Pilot (RVCP) program implements the requirements of section 506 of the Caregivers and Veterans Omnibus Health Services Act of 2010 to provide grants to community-based organizations and local and State government entities to assist veterans who are transitioning from military service to civilian life in rural or underserved communities and families of such veterans.

(b) *Scope.* This part applies only to the administration of the RVCP, unless specifically provided otherwise.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.2 Definitions.

For the purpose of this part and any Notice of Funds Availability issued under this part:

Applicant means an eligible entity that submits an application for an RVCP grant as announced in a Notice of Funds Availability.

Community-based organization means a group that represents a community or a significant segment of a community and is engaged in meeting community needs.

Eligible entity means a community-based organization or local or State government entity. An eligible entity will be identified as the legal entity whose employer identification number is on the Application for Federal Assistance (SF 424), even if only a particular component of the broader entity is applying for the RVCP grant.

Grantee means recipient of an RVCP grant.

Limited access to health care means residing in an area identified by the Health Resources and Services Administration of the U.S. Department of Health and Human Services as ''medically underserved'' or having a ''medically underserved population.''

Local government means a county, municipality, city, town, township, or regional government or its components.

Minority group member means an individual who is Asian American; Black; Hispanic; Native American (including American Indian, Alaskan Native, and Native Hawaiian); or Pacific-Islander American.

Notice of Funds Availability (NOFA) means a Notice published by VA in the **Federal Register** alerting eligible entities of the availability of RVCP grants and containing important information about the RVCP grant application process in accordance with § 64.8.

Participant means a veteran or a member of a veteran's family who receives services for which an RVCP grant is awarded.

Rural means an area classified as ''rural'' by the U.S. Census Bureau.

Rural Veterans Coordination Pilot (RVCP) refers to the pilot grant program authorized by section 506 of the Caregivers and Veterans Omnibus Health Services Act of 2010.

State government means any of the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State government.

Underserved communities are areas that meet one or more of the following criteria:

(1) Have a high proportion of minority group representation;

(2) Have a high proportion of individuals who have limited access to health care; or

(3) Have no active duty military installation that is reasonably accessible to the community.

VA means the U.S. Department of Veterans Affairs.

Veteran means a person who served in active military, naval, or air service, who was discharged or released under conditions other than dishonorable.

Veteran who is transitioning from military service to civilian life means a veteran who is separating from active military, naval, or air service in the Armed Forces to return to life as a civilian and such veteran's date of discharge or release from active military, naval, or air service was not more than 2 years prior to the date on which the RVCP grant was awarded.

Veteran's family means those individuals who reside with the veteran in the veteran's primary residence. These individuals include a parent, a spouse, a child, a step-family member, an extended family member, and individuals who reside in the home with the veteran but are not a member of the family of the veteran.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.4 RVCP grants—general.

(a) VA will award five RVCP grants to eligible entities as defined in § 64.2.

(b) An eligible entity may receive only one RVCP grant, and only one RVCP grant will be awarded in any one pilot project location (see § 64.12(a)(6)).

(c) RVCP grants will be awarded for a maximum period of 2 years, beginning on the date on which the RVCP grants are awarded. They will not be extended or renewable.

(d) A grantee will not be required to provide matching funds as a condition of receiving an RVCP grant.

(e) No participant will be charged a fee for services provided by the grantee or be required to participate in other activities sponsored by the grantee as a condition of receiving services for which the RVCP grant is made.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.6 Permissible uses of RVCP grants.

(a) Grantees must maximize the use of RVCP grants by ensuring that at least 90 percent of funds awarded are used to provide services designed to aid in the adjustment to civilian life in one or more of the following areas:

(1) *Increasing coordination of health care and benefits for veterans.* Examples include, but are not limited to, identifying sources of community, local, State, and Federal health care and benefits; obtaining necessary applications and assisting veterans in the preparation of applications for such care and benefits; and identifying and eliminating barriers to receiving identified benefits.

(2) *Increasing availability of high quality medical and mental health services.* Examples include, but are not limited to, increasing availability of or access to insurance or low- or no-cost public or private health care, including out-patient care, preventive care, hospital care, nursing home care, rehabilitative care, case management, respite care, and home care; providing assistance in accessing or using telehealth services; transporting veterans to medical facilities or transporting medical or mental health providers to veterans; and providing assistance in obtaining necessary pharmaceuticals, supplies, equipment, devices, appliances, and assistive technology.

(3) *Providing assistance to families of transitioning veterans.* Examples include, but are not limited to, helping obtain medical insurance for family members; helping the family obtain suitable housing; providing job-search assistance or removing barriers for family members seeking employment;

assisting the family in identifying and applying to appropriate schools and/or child care programs; securing learning aids such as textbooks, computers and laboratory supplies; and obtaining personal financial and legal services.

(4) *Outreach to veterans and families.* Examples include, but are not limited to, the provision, development or deployment of various media tools (e.g., Internet, television, radio, flyers, posters, etc.), activity days, program booths, or other strategies to reach transitioning veterans and their families in the target community and assist them with their transition from military service to civilian life. Outreach services may be provided directly by the RVCP grantee or the grantee may engage the outreach services of another entity using RVCP funds.

(b) Grantees may use up to 10 percent of the RVCP grant for indirect costs, i.e., the expenses of doing business that are not readily identified with a particular grant but are necessary for the general operation of the grantee organization and the conduct of activities it performs.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.8 Notice of Funds Availability (NOFA).

When funds are available for RVCP grants, VA will publish a NOFA in the **Federal Register** and in Grants.gov (*http://www.grants.gov*). The NOFA will identify:

(a) The location for obtaining RVCP grant applications, including the specific forms that will be required;

(b) The date, time, and place for submitting completed RVCP grant applications;

(c) The estimated total amount of funds available and the maximum funds available to a single grantee;

(d) The minimum number of total points and points per category that an applicant must receive to be considered for a grant and information regarding the scoring process;

(e) Any timeframes and manner for payments under the RVCP grant; and

(f) Other information necessary for the RVCP grant application process, as determined by VA, including contact information for the office that will oversee the RVCP within VA.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.10 Application.

(a) To apply for an RVCP grant, eligible entities must submit to VA a complete application package. Applications will be accepted only through Grants.gov (*http://www.grants.gov*).

(b) A complete RVCP grant application package includes the following:

(1) A description of the services to be provided and which of the permissible uses for RVCP grants outlined in § 64.6(a) the services are intended to fulfill.

(2) A description, with supporting documentation, of the need for the proposed project in the proposed location, including an estimate, with supporting documentation, of the number of veterans and families that will be provided services by the applicant.

(3) A description, with supporting documentation, of how the proposed project location qualifies as a rural or an underserved community, as defined in this part.

(4) Documentation evidencing the applicant's experience in providing the proposed services, particularly to veterans and their families.

(5) Evidence of a clear, realistic, and measurable program of self-evaluation and monitoring, including a documented commitment to remediate any identified noncompliance.

(6) Documentation of the ability of the applicant to administer the project, including plans to:

(i) Continuously assess and adapt to the needs of participants for services under the RVCP grant;

(ii) Coordinate and customize the provision of services to the identified needs of the participants;

(iii) Comply with and implement the requirements of this part throughout the term of the RVCP grant; and

(iv) Complete and submit timely reports of RVCP grant activities.

(7) A description of any assistance received from or any consultations with VA or Veterans Service Organizations (VSO's) in the development of the proposal being submitted.

(8) Any additional information deemed appropriate by VA and set forth in the NOFA.

(Authority: 38 U.S.C. 501, 523 *note*)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 4040–0003, 4040–0004, 4040–0006, 4040–0007, 4040–0008, 4040–0009, and 4040–0010.)

§ 64.12 Scoring and selection.

(a) *Scoring.* VA will score only complete applications received from eligible entities by the established deadline. Applications will be scored using the following criteria:

(1) *Background, organizational history, qualifications, and past performance (maximum 10 points).* Applicant documents a relevant history of successfully providing the type of services proposed in the RVCP grant application, particularly in the location it plans to serve and/or to veterans and their families.

(2) *Need for pilot project (maximum 10 points).* Applicant demonstrates the need for the pilot project among veterans and their families in the proposed project location, and provides evidence of the applicant's understanding of the unique needs of veterans and their families in the location to be served.

(3) *Pilot project concept, innovation, and ability to meet VA's objectives (maximum 40 points).* Application shows appropriate concept, size, and scope of the project; provides realistic estimates of time, staffing, and material needs to implement the project; and details the project's ability to enhance the overall services provided, while presenting realistic plans to reduce duplication of benefits and services already in place. Application must describe a comprehensive and well-developed plan to meet one or more of the permissible uses set out in § 64.6.

(4) *Pilot project evaluation and monitoring (maximum 10 points).* Self-evaluation and monitoring strategy provided in application is reasonable and expected to meet requirements of § 64.10(b)(5).

(5) *Organizational finances (maximum 10 points).* Applicant provides documentation that it is financially stable, has not defaulted on financial obligations, has adequate financial and operational controls in place to assure the proper use of RVCP grants, and presents a plan for using RVCP grants that is cost effective and efficient.

(6) *Pilot project location (maximum 20 points).* Applicant documents how the proposed project location meets the definition of rural or underserved communities in this part.

(b) *Selection of grantees.* All complete applications will be scored using the criteria in paragraph (a) and ranked in order from highest to lowest total score. VA will rank all applications that receive at least the minimum number of points indicated in the NOFA. VA will award one RVCP grant to the highest scoring application. VA will award RVCP grants to each successive application, ranked by total score, provided the applicant has not been awarded an RVCP grant for a higher scoring application and the proposed project is not in the same project location as any previously awarded RVCP grant.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.14 RVCP grant agreement.

(a) VA will draft an RVCP grant agreement to be executed by VA and the grantee.

(b) The RVCP grant agreement will provide that the grantee agrees to:

(1) Operate the project in accordance with this part and the terms of the agreement;

(2) Abide by the following additional requirements:

(i) Community-based organizations are subject to the Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations under 38 CFR part 49, as well as to OMB Circular A–122, Cost Principles for Non-Profit Organizations, codified at 2 CFR part 230, and 2 CFR parts 25 and 170, if applicable.

(ii) Local and State government entities are subject to the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments under 38 CFR part 43, as well as to OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments, and 2 CFR parts 25 and 170, if applicable.

(3) Comply with such other terms and conditions, including recordkeeping and reports for project monitoring and evaluation purposes, as VA may establish for purposes of carrying out the RVCP in an effective and efficient manner and as described in the NOFA; and

(4) Provide any necessary additional information that is requested by VA in the manner and timeframe specified by VA.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.16 Reporting.

(a) *Quarterly reports.* All grantees must submit to VA quarterly reports based on the Federal fiscal year, which include the following information:

(1) Record of time and resources expended in outreach activities, and the methods used;

(2) The number of participants served, including demographics of this population;

(3) Types of assistance provided;

(4) A full accounting of RVCP grant funds received from VA and used or unused during the quarter; and

(5) Results of routine monitoring and any project variations.

(b) *Submission of reports.* Reports must be submitted to VA no later than 15 calendar days after the close of each Federal fiscal quarter.

(c) *Additional reports.* VA may request additional reports to allow VA to fully assess project accountability and effectiveness.

(Authority: 38 U.S.C. 501, 523 *note*)

§ 64.18 Recovery of funds.

(a) *Recovery of funds.* VA may terminate a grant agreement with any RVCP grantee that does not comply with the terms of the RVCP agreement. VA may recover from the grantee any funds that are not used in accordance with a RVCP grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover RVCP grant funds, and the grantee will then have 30 days beginning from the date of the notice to submit documentation demonstrating why the RVCP grant funds should not be recovered. If the RVCP grantee does not respond or if the grantee responds but VA determines the documentation is insufficient to establish compliance, VA will make a final determination as to whether action to recover the RVCP grant funds will be taken.

(b) *Prohibition of further grants.* When VA determines action will be taken to recover grant funds from a grantee, the grantee will be prohibited from receiving any further RVCP grant funds for the duration of the pilot program.

(Authority: 38 U.S.C. 501, 523 *note*)

[FR Doc. 2012–17434 Filed 7–17–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0041; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list six Nevada sand dune beetle species as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). In our 90-day finding on this petition (76 FR 47123, August 4, 2011), we determined that the petition presented substantial information indicating that listing may be warranted for four of the six species: Crescent Dunes aegialian scarab (*Aegialia crescenta*), Crescent Dunes serican scarab (*Serica ammomenisco*), large aegialian scarab (*Aegialia magnifica*), and Giuliani's dune scarab (*Pseudocotalpa giulianii*). We also determined that the petition did not present substantial information indicating that listing the other two species, Hardy's aegialian scarab (*Aegialia hardyi*) and Sand Mountain serican scarab (*Serica psammobunus*), may be warranted. We therefore initiated status reviews on only the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab. After review of the best available scientific and commercial information, we find that listing these four beetle species is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to these four beetle species or their habitat at any time.

DATES: The finding announced in this document was made on July 18, 2012.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2011–0041. The supporting documentation used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, State Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**); by telephone at 775–861–6300; or by facsimile at 775–861–6301. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information indicating that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal

of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Petition History

On February 2, 2010, we received a petition dated January 29, 2010, from WildEarth Guardians (referred to below as the petitioner). The petitioner requested that the Service list six species of sand dune beetles in Nevada as endangered or threatened, and designate critical habitat, under the Act. The six beetle species are Hardy's aegialian scarab (*Aegialia hardyi*), Sand Mountain serican scarab (*Serica psammobunus*), Crescent Dunes aegialian scarab (*A. crescenta*), Crescent Dunes serican scarab (*S. ammomenisco*), large aegialian scarab (*A. magnifica*), and Giuliani's dune scarab (*Pseudocotalpa giulianii*). Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, current status, and actual and potential causes of decline.

On March 12, 2010, we acknowledged receipt of the petition in a letter to the petitioner. We informed the petitioner that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not necessary. We also stated that we anticipated making an initial finding in fiscal year 2010.

On August 4, 2011, we made our 90-day finding that the petition did not present substantial scientific or commercial information indicating that listing two of the six beetle species, the Hardy's aegialian scarab and Sand Mountain serican scarab, may be warranted (76 FR 47123, August 4, 2011). Therefore, no further action is required on the petition as it relates to these two species. However, we determined that the petition presented substantial scientific or commercial information indicating that listing of the other four beetle species, the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab, may be warranted. At that time, we initiated a review of the status of these species to determine if listing these four beetle species is warranted.

This notice constitutes the status review on the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab and the 12-month finding on the February 2, 2010, petition to list these species as endangered or threatened and to designate critical habitat under the Act.

Previous Federal Actions

On August 10, 1978, the Service proposed to list Giuliani's dune scarab as threatened, citing the effects of off-road vehicle (ORV) use (43 FR 35636). The Service stated that ORV activity compacts dead organic matter accumulated on dune slopes and prevents its buildup, thereby destroying the larval habitat of the beetle. The proposed rule also determined that there were no State and Federal laws protecting the species and its habitat. Included in the proposed rule was a proposal to designate critical habitat at Big Dune, Nye County, Nevada.

On October 1, 1980, the Service withdrew the proposal to list Giuliani's dune scarab (45 FR 65137). We took this action because, at that time, amendments to the Act mandated that we withdraw any proposed rules to list species that we had not finalized within 2 years of the proposal.

In 1984, 1989, and 1991, we published notices of review that identified Crescent Dunes aegialian scarab, large aegialian scarab, and Giuliani's dune scarab as candidates under consideration for addition to the List of Endangered and Threatened Wildlife (49 FR 21664, May 22, 1984; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991). In each notice of review, each beetle was identified as a category 2 candidate. Category 2 candidates were those for which the Service possessed information indicating that listing as endangered or threatened was possibly appropriate but for which conclusive data on biological vulnerability and threats were not currently available to support a proposed rule.

On February 28, 1996, the Service adopted a single category of candidate species and no longer considered category 2 species as candidates (61 FR 7595), thus removing the beetles from consideration. The decision to stop considering category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

Species Information

Taxonomy and Species Description

As a whole, the invertebrates of Nevada are poorly studied, and there is limited life-history information for these sand dune beetle species (NDOW 2006, p. 12). However, the taxonomic information is available and was reviewed to reach the conclusion that each of these species is a valid taxon. All four of the beetle species are taxonomically categorized as follows: Kingdom Animalia, Phylum Mandibulata, Class Insecta, Order Coleoptera, Superfamily Scarabaeoidea, Family Scarabaeidae.

The Crescent Dunes aegialian scarab (Subfamily Aphodiinae, Tribe Aegialiini (Brown 1931, pp. 9, 11–12), *Aegialia crescenta*) was first described in 1977 (Gordon and Cartwright 1977, pp. 45–47) and genetically analyzed in 1997 (Porter and Rust 1997, pp. 304, 306, 308). These beetles are 3.75 to 5.00 millimeters (mm) (about 0.19 inch (in)) long and 2.05 to 2.70 mm (less than 0.13 in) wide (Gordon and Cartwright 1977, p. 45). The adults are dark reddish brown with yellowish underside, legs, and mouthparts. Little is known about the larvae of the Crescent Dunes aegialian scarab.

The Crescent Dunes serican scarab (Subfamily Melolonthinae, Tribe Sericini (Hayes 1929, p. 26), *Serica ammomenisco*) (errantly spelled *ammomensico* in some texts) was first described in 1987 (Hardy and Andrews 1987, pp. 173–174). The name is derived from the Greek *ammo* (sand) and *menisco* (crescent) and refers to the only place they are known to occur, Crescent Dunes. These beetles are 6.5 to 8.2 mm (0.25 to 0.33 in) long and 3.4 mm (0.13 in) wide (Hardy and Andrews 1987, p. 173). The adults have a black head and thorax with dark brown legs; however, their color ranges from pale brown to brownish black (Hardy and Andrews 1987, p. 173). They are recognized by the band of pale hairs behind the top of the head (clypeus), their relatively light coloration, and the unique genitalia of the males (Hardy and Andrews 1987, p. 173). Little is known about larvae of the Crescent Dunes serican scarab.

The large aegialian scarab (Subfamily Aphodiinae, Tribe Aegialiini (Brown 1931, pp. 9, 11–12), *Aegialia magnifica*) also was first described by Gordon and Cartwright in 1977 (pp. 43–45) and genetically analyzed in 1995 (Porter and Rust 1996, pp. 711, 716, 718; 1997, pp. 304, 306, 308). These beetles are 4.40 to

5.90 mm (about 0.25 in) long and 2.48 to 3.25 mm (less than 0.25 in) wide (Gordon and Cartwright 1977, p. 43). The adults are pale red with yellowish-red mouthparts and underside. They have a smooth upper back and do not have wings. Little is known about the larvae of the large aegialian scarab.

The Giuliani's dune scarab (Subfamily Rutelinae, Tribe Rutelini (Hayes 1929, p. 29), *Pseudocotalpa giulianii*) was first described by Hardy in 1974 (pp. 243–247). These beetles are 17 to 25 mm (0.75 to 1 in) long and 7 to 10 mm (0.25 to 0.50 in) wide (Hardy 1974 p. 244). The adults are light tan with a more yellowish head; the legs are darker tan with reddish brown feet (tarsi) and claws. Males and females are similar in appearance, but easily distinguished by the size of the claws at the end of their rear legs; female claws are equal whereas the outer claw of the male is twice as long as the inner (Rust 1985, p. 105). Larvae average 12 mm (0.47 in) in length and resemble a white grub (Rust 1985, p. 108).

These four beetle species are not vertebrates and therefore the Service's Distinct Vertebrate Population Segment policy (61 FR 4722, February 7, 1996) does not apply.

Habitat

Many genera of Scarabaeidae in North American deserts, including these four dune beetle species, occur in vegetated, unstable, sandy areas around sand dunes. The dunes and surrounding unstable, sandy areas are created by sand that is carried by wind from dry lakebeds upwind of the dunes. These four beetle species burrow and live in loose sand, eat decomposed plant matter, and mate on live vegetation (Hardy 1971, pp. 240–241; 1976, pp. 301–302; Gordon and Cartwright 1977, p. 42; Hardy and Andrew 1987, p. 178; Rust 1982, pp. 3–4). The beetles need moist sand to protect them from temperature extremes (both hot and cold) and drying out (Porter and Rust 1996, p. 709; Service 2012a, p. 3).

Distribution

The historical range of each of these four beetle species is unknown. It is also unknown whether the range of any of the four species has changed since they were first described in the 1970s and 1980s.

Based on surveys conducted in January 2012, the current known range of the Crescent Dunes aegialian scarab is limited to 6,594 ha (16,295 ac) of BLM-administered lands at two main sand dunes—Crescent Dunes and San Antonio Dunes, within a larger dune complex in Big Smoky Valley (Nachlinger *et al.* 2001, p. A10–82; Service 2012a, pp. 1, 5). Crescent Dunes is a 402-hectare (ha) (996-acre (ac)) complex of crescent-shaped sand dunes located about 19 kilometers (km) (12 miles (mi)) northwest of Tonopah, Nye County, Nevada (NRCS 1972, pp. 23, 55, Maps 15, 18, 21; 2006a, p. 1). Crescent Dunes is created by prevailing winds from the northwest, which are primarily associated with Pacific Ocean Cell winter storms (i.e., El Niño and La Niña) (Parsons 2010, p. 15). Studies indicate that the Crescent Dunes system has moved less than 76 meters (m) (250 feet (ft)) southeast since 1954 (Parsons 2010, pp. 18–19). San Antonio Dunes is a 751-ha (1,856-ac) complex of dunes located approximately 24 km (15 mi) north of Crescent Dunes at the northern edge of the San Antonio Mountains. It is likely that San Antonio Dunes is created by the same prevailing wind that has created Crescent Dunes.

Based on surveys conducted in January 2012, the current known range of the Crescent Dunes serican scarab is restricted to 5,843 ha (14,439 ac) of BLM-administered land at Crescent Dunes (at this time it is unknown if it occurs at the nearby San Antonio Dunes) (Hardy and Andrew 1987, p. 178; Gordon and Cartwright 1977, p. 45; Hardy and Andrews 1987, p. 173; Service 2012a, p. 1). The species' range estimates are larger than the areas of the dunes (as indicated above) because the beetles occur on the dune and in sandy areas surrounding the dune.

It is unknown if the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab also occur at sand dunes on BLM-administered lands near Millers, Nevada, and about 40 km (25 mi) southwest of the Crescent Dunes. These dunes are part of the same larger dune complex as Crescent Dunes within Big Smoky Valley (BLM and DOE 2010, pp. 11.7–60; Service 2012a, p. 1). Gordon and Cartwright reported a record for the Crescent Dunes aegialian scarab at Game Range Dunes in Clark County, Nevada (1988, p. 18). However, we have no other information confirming that the Crescent Dunes aegialian scarab occurs anywhere other than at Crescent Dunes and San Antonio Dunes. Presence of the Crescent Dunes aegialian scarab at Game Range Dunes is unlikely because these dunes are located approximately 200 km (125 mi) southeast of Crescent Dunes.

The current known range of the large aegialian scarab and Giuliani's dune scarab is restricted to two sand dune complexes on BLM-administered lands—Big Dune (also called Amargosa Dunes) and Lava Dune (Hardy 1974, pp. 243–247; Gordon and Cartwright 1977, pp. 43–45; Porter and Rust 1996, p. 718; Service 2011a, pp. 1–12; 2011b p. 1–7; 2012b pp. 1–4). Big Dune is a 305-ha (753-ac) complex star sand dune located 16.5 km (10 mi) west of Lathrop Wells, Nye County, Nevada (NRCS 1998, p. 35, Map 33). It is formed from prevailing winds from the northeast (PSI 2009, p. F–21); however, the wind directions at Big Dune vary seasonally and are also out of the southeast (BLM and DOE 2010, p. 11.1–209). Lava Dune is a 170-ha (420-ac) dune located 6 km (4.5 mi) east of Big Dune, which was formed from sand trapped at the base of an old volcanic cinder cone and lava flow (NRCS 2006b, p. 1).

Based on surveys conducted in February 2012, the estimated range of the large aegialian scarab is 490 ha (1,212 ac) of BLM-administered land at Big Dune and approximately 200 ha (494 ac) of BLM-administered land at Lava Dune (Service 2011a, pp. 3–4; 2012b, p. 3). The species' range estimate is larger than the areas of the dunes (as indicated above) because the beetle occurs on the dune and in sandy and vegetated areas surrounding the dune. The large aegialian scarab has a patchy distribution, but occurs underneath every species of live vegetation throughout the Big Dune area (Service 2012b p. 2).

Based on surveys conducted in April 2011, the estimated range of the Giuliani's dune scarab is 307 ha (759 ac) of BLM-administered land at Big Dune and 200 ha (494 ac) of BLM-administered land at Lava Dune (Service 2012b, p. 3). The species' range estimate is larger than the areas of the dunes (as indicated above) because the beetle occurs on the dune and in sandy areas surrounding the dune. The Giuliani's dune scarab has a clumped distribution and uses the north face of the dune more heavily than the south and west faces (BLM 2007, p. 4; Boyd 2010, pp. 2, 6–7). Three other dune complexes located near Big Dune and Lava Dune—the Skeleton Hills, Dumont Dunes, and Ibex Dune—have been surveyed for Giuliani's dune scarab, but none were found (Hardy and Andrews 1976, pp. 1–44; Rust 1982, p. 2).

Biology and Population Abundance

Crescent Dunes Aegialian Scarab and Crescent Dunes Serican Scarab—Little is known about the population abundance or biology of the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab. During a survey in January 2012, the Crescent Dunes aegialian scarab was observed beneath every species of live plant surrounding the dunes, such as *Oryzopsis hymenoides* (Indian ricegrass), *Atriplex*

spp. (saltbush), and *Salsola* spp. (tumbleweed) (Service 2012a, p. 3). The sex ratio of Crescent Dunes aegialian scarab at Crescent Dunes was one male to one female (Service 2012a, p. 5). We reviewed other regional sand dune-obligate beetles as surrogates, but did not locate life-history information for the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab (Gordon 1975, pp. 173–175; Gordon and Cartwright 1977, pp. 47–48; Andrews *et al.* 1979, p. 19; Rust 1986, pp. 47–51; Service 1992, pp. 1–5; Britten and Rust 1996, pp. 649–651; Van Dam and Van Dam 2006, pp. 31–35). However, it is likely the Crescent Dunes aegialian scarab has similar life history to the large aegialian scarab because they are taxonomically related and genetically similar (Porter and Rust 1997, pp. 304, 306, 308).

Large Aegialian Scarab—Both adult and larval large aegialian scarabs live beneath any species of live plant throughout the Big Dune area, such as *Larrea tridentata* (creosote bush) and *Salsola* spp. (Rust 1995, p. 7; Service 2012b, p. 2). They burrow into loose sand to access wet sand (Hardy and Andrew 1987, p. 175). The year-round wet sand is usually 0.5 to 1.0 m (1.6 to 3.3 ft) under the surface. They can be located from October to April by sifting moist sand 8 to 33 centimeters (cm) (3 to 13 in) deep beneath dune plants (Rust 1995, p. 6). Adult large aegialian scarabs are most active from mid-February to late April. Based on limited reported survey data, we were not able to estimate population abundance for this species. In the only reported survey, a combined total of 316 large aegialian scarabs were observed at Big Dune from March to April 2007 (Boyd 2010, pp. 5–6). Presence of large aegialian scarabs at Lava Dune was confirmed, but only limited sampling occurred on December 17, 2007 (Boyd 2010, pp. 9–10).

Giuliani's Dune Scarab—Adult Giuliani's dune scarabs live underneath vegetation closely surrounding the edge of the large dune, and most commonly occur under *Petalonyx thurberi* (sandpaper plant) (Rust 1995, p. 6; Boyd 2010, p. 10). They are only observed aboveground when they emerge for 3 weeks from late April to early May. They emerge for 5 to 30 minutes each evening to hover over and mate on shrub vegetation and the sand surface (Hardy 1971, pp. 240–241; 1976, pp. 301–302; Rust 1982, pp. 3, 5; Service 2011a, pp. 2–5). Aboveground mating activity is greatly reduced when it is cold and windy (Rust 1982, p. 4; 1985 p. 106; Boyd 2010, p. 4).

In trying to determine how long adult Giuliani's dune scarabs live, the Bureau of Land Management (BLM) marked approximately 160 beetles over a 3-week period in April 2011; only one adult beetle was recaptured 1 week after its original capture (Service 2011a, p. 4). The adults do not feed (Rust 1982, p. 9), and it is unknown how long they live once they change from a grub (larva) to an adult.

Hardy (1976, pp. 301–302) reported a sex ratio of Giuliani's dune scarabs at Big Dune of 1.3 males to 10 females, and Rust (1985, p. 108) reported a ratio of 2.5 males to 10 females. In contrast to these sex ratios, Boyd (2007, p. 3) reported that in a sample of 140 Giuliani's dune scarabs collected at Big Dune, 136 were male and 4 were female. Various factors influence the sex ratio of different samples, such as collection method and timing.

Attempts to quantify adult population structure of Giuliani's dune scarab, including population numbers, have failed (Rust 1985, pp. 106, 108; Murphy 2007, p. 1; Boyd 2010, pp. 3–4). In an unpublished report, Rust (1982, p. 5) estimated that the adult Giuliani's beetle population at Big Dune was between 1,000 and 5,000 individuals, but this estimate was not based on count data. In a survey conducted around the perimeter of Big Dune in 2007, adult Giuliani's dune scarabs were detected at seven of eight survey sites on April 24, and at four of four survey sites on May 1 (Boyd 2010, p. 2). Approximately 800 to 1,000 individual Giuliani's dune scarabs were detected on the April 24 survey and 140 individuals were collected on May 1 (Boyd 2010, pp. 2–3). Approximately 40 individuals were detected at Lava Dune on a May 3, 2007, survey; however, the sampling effort at Lava Dune was much lower than the sampling effort at Big Dune (Boyd 2010, p. 3).

Larval Giuliani's dune scarabs also live beneath plants surrounding the dune. We found no information on when the larvae emerge. Larvae are an average 12 mm (0.5 in) in length and take 2 or more years to fully develop (Rust 1982, p. 6). Only two Giuliani's dune scarab larvae have been recovered and both occurred beneath *Petalonyx thurberi* at a depth of 20 to 40 cm (8 to 16 in) (Rust 1982, p. 5; 1985, p. 108). Larvae feed on accumulated plant debris at the base of shrubs (Rust 1982, pp. 4–5; 1985, p. 108; 1995, p. 6; Boyd 2010, p. 10).

Eggs of Giuliani's dune scarab are oval and measure 3.0 to 3.5 mm (0.25 in) long by 2.5 to 3.0 mm (0.25 in) wide. Females examined in 1982 had an average of 4.2 eggs (Rust 1982, p. 5). We found no information on egg placement; however, it is thought that eggs are deposited in sand near shrub roots (Rust 1982, p. 5).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. This does not necessarily require empirical proof of a significant threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. However, the mere identification of factors that could impact a species negatively is not sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act. A species may be endangered or threatened based on the intensity or severity of one operative threat alone or based on the synergistic effect of several operative threats acting in concert.

In making this finding, we have considered and evaluated the best available scientific and commercial information pertaining to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab,

and Giuliani's dune scarab. We examined the petition, information in our files, and other published and unpublished literature in relation to the five factors provided in section 4(a)(1) of the Act. Additionally, we solicited information from the public, but did not receive any response. We consulted with biologists from the BLM, the Service, and the Nevada Natural Heritage Program.

Below we summarize the information regarding the status and threats to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab in relation to the five factors in section 4(a)(1) of the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In this section, we describe and evaluate various conditions in relation to the present or threatened destruction, modification, or curtailment of the habitats and ranges of the four beetle species. We identified the following activities as potentially impacting the species' habitats and ranges: Mining, solar development, off-road vehicle recreation, commercial filming, and livestock grazing.

Mining

Mining removes vegetation and soil and alters surface water flows and infiltration of water. Indirect effects of mining, such as establishment of new roads to access mines and increased human presence, cause increased vegetation impacts and beetle displacement. Destruction of vegetation around dunes, disturbance of dune sand, and disruption of reproductive behavior would reduce or eliminate sand dune beetle populations because the larvae of the beetle use decomposed organic matter as their primary food source and the adults mate on live vegetation.

There are three different types of mineral resources on BLM-administered lands: Locatable (such as iron and gold), leasable (typically oil and gas), and salable (common materials such as sand, gravel, clay, and lava rock) (BLM 2011, p. 10). Locatable minerals are ''claimed,'' while leasable and salable minerals are only offered by the BLM upon request.

A mining claim is an administrative action in which a claimant receives a possessory right to the subsurface mineral (BLM 2011a, p. 7). The BLM cannot deny a mining claim because the General Mining Law of 1872 (30 U.S.C. 22 *et seq.*) gives a person a statutory right to the claim. However, a claim does not authorize surface disturbance. In order to extract the mineral, the claimant must file a plan of operation (BLM 2011a, p. 29). An approved plan of operation allows the claimant to obtain surface rights and begin mining operations (BLM 2011a, p. 33).

Once a request to develop (extract) any mineral resource, including locatable, leasable, and salable minerals, the BLM must go through several steps. First, an interdisciplinary team of professional resource specialists (e.g., hydrologists, biologists, geologists, and archeologists) reviews the plan of operation. These specialists are able to make recommendations on project design and implementation to reduce impacts to wildlife, plants, and other resources. Then, the BLM must solicit input from the public and other Federal agencies on the plan of operation, as required under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*). Using this input, the BLM may further amend the project's design and implementation, or it may reject the plan of operation. If the BLM grants the permit for mineral development, it maintains discretion over how and when these operations proceed through the terms of the right-of-way (ROW) grant under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the regulations in parts 2800 and 3000 of title 43 of the Code of Federal Regulations (43 CFR 2800 and 43 CFR 3000).

BLM classifies each of the four dune beetles addressed in this finding as a sensitive species (BLM 2003, p. 6). BLM manages sensitive species in accordance with BLM Manual 6840 Release 6–125, revised on December 12, 2008 (BLM 2008b). BLM defines sensitive species as ''species that require special management or considerations to avoid potential future listing'' (BLM 2008b, Glossary, p. 5). The stated objective for sensitive species is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing under the Act (BLM 2008b, Section 6840.02). Conservation, as it applies to BLM sensitive species, is defined as ''the use of programs, plans, and management practices to reduce or eliminate threats affecting the status of the species, or improve the condition of the species' habitat on BLM-administered lands'' (BLM 2008b, Glossary, p. 2).

Locatables—The areas around Crescent Dunes and San Antonio Dunes have low potential for locatable minerals (BLM 1997, Map 32). Historically, there have been no locatable mining claims at Crescent Dunes and four claims at San Antonio Dunes. Currently, there are no locatable mining claims on Crescent Dunes or San Antonio Dunes. Although it is possible that mining claims may be filed in the future, the low potential for locatable minerals and low number of historical claims indicate that such future claims are unlikely. If development of any mining claims is requested, BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

The areas around Big Dune and Lava Dune have no potential for locatable minerals (Castor *et al.* 2006, pp. L2–L3). Prior to 2006, there were 23 mining claims at Big Dune and 26 claims at Lava Dune. All of these were removed after it was determined there was no potential for locatable minerals (Castor *et al.* 2006, pp. L2–L3).

Although there is no potential for locatable minerals at Lava Dune, currently there are 39 gold mining claims on Lava Dune that overlap 29 percent of the range of the large aegialian scarab and 40 percent of the range of the Giuliani's dune scarab (BLM serial Nos. NMC 916075 to 916093 and NMC 360591 to 360610, filed December 7, 2005). No plans of operation have been filed for any of the mining claims at Lava Dune (BLM 2011b, pp. 1–62). There is no time limit for the claimant to file a plan of operation, and a claim remains in effect as long as the claimant continues to pay the annual BLM maintenance fee.

No mining claims can be filed at Big Dune until the year 2029, because 777 ha (1,920 ac) of land has been closed to mining under Secretarial Order 7737 until that time (74 FR 56657; November 2, 2009). This area represents 71 percent of the range of the large aegialian scarab and 60 percent of the range for the Giuliani's dune scarab. It is possible that mining claims may be filed at Lava Dune; however, it is unlikely because the area has no potential for locatable minerals. If development of any mining claim is requested, BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Leasables—The areas around Crescent Dunes and San Antonio Dunes (BLM 1997, Map 32), Big Dune, and Lava Dune (Castor *et al.* 2006, pp. L2–L3) have a low potential for leasable minerals. Historically, there have been no requests for leasable minerals on

Crescent Dunes, Big Dune, and Lava Dune, and two requests on San Antonio Dunes. Currently, there are no leased minerals on Big Dune, Lava Dune, Crescent Dunes, or San Antonio Dunes. Although it is possible that requests for leasable minerals may be submitted in the future, the low potential for leasable minerals and low number of historical requests indicate that such future requests are unlikely. If any mineral leases are requested, BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Salables—The area around Crescent Dunes is rich in sand. The area around San Antonio Dunes does not have much sand (Service 2012a). Historically, there has been only one request for development of salable minerals at Crescent Dunes and no requests at San Antonio Dunes. Currently, there are no requests for salable minerals at Crescent Dunes or San Antonio Dunes. Although it is possible that development of salable minerals may be requested at Crescent Dunes or San Antonio Dunes in the future, the historical lack of requests for salable minerals in the area indicate that such future requests are unlikely. If development of salable minerals is requested, BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Big Dune is rich in sand, while Lava Dune is rich in sand and lava rock. Historically, there has been only one request for salable minerals at Big Dune and two requests at Lava Dune. Currently, there are no requests for salable mineral development on Big Dune.

There is one pending request to extract lava rock on 74 ha (182 ac) of BLM-administered land at Lava Dune (BLM serial no. NVN 074682). This area represents 11 percent of the range of the large aegialian scarab and 15 percent of the range of the Giuliani's dune scarab. The request and plan of operation for mining lava rock at Lava Dune were submitted on March 9, 2001, and have not been approved or denied. This request to extract lava rock on Lava Dune underwent internal interdisciplinary review in 2005. Although the Service did not provide comments on this proposal, we provided comments on an earlier mining request by the same claimant in the same area. In 1993, we stated, ''implementation of the proposed action may result in severe impacts to the candidate species which occur on Big Dune and may threaten their population status'' (BLM 2005, p. 1). The BLM only approved mining on the portions of Lava Dune that were not suitable habitat for the large aegialian scarab and Giuliani's dune scarab. In 2005, the BLM wildlife biologists recommended the 2001 request not be approved because the area is suitable habitat for the large aegialian scarab and Giuliani's dune scarab and because of our 1993 comments (BLM 2005, p. 1; 2006, p. 1; 2008, pp. 1–48). During recent discussions, the BLM informed us that the 2001 request is pending analysis under NEPA (BLM 2005, p. 1; 2006, p. 1; Service 2012b, p. 2). After the request has been announced to the public, and after the BLM has considered any public comments submitted on the request, the BLM may grant a ROW to the operator or deny the request. If approved, the BLM has discretion over how and when these operations proceed. Although this request was submitted 11 years ago, there is no time limit for BLM to act on the request under 43 CFR 2900.

In the future, it is possible that requests to develop salable minerals at Big Dune or Lava Dune may be filed because these areas are rich in sand and lava rock, although historically there have been few requests for development of salable minerals in these areas. If requests for development of salable minerals are received, the BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

There are no active mining operations at Big Dune, Crescent Dunes, or San Antonio Dunes. Although there is one active lava rock mining operation on Lava Dune (Cind-R–Lite 2011, p. 1), the mined area occurs on solid rocky ground of an old volcanic cinder cone (NRCS 2006b, p. 1) and is not suitable habitat for the large aegialian scarab or Giuliani's dune scarab (Service 2011b, p. 3).

Conclusion—We do not consider mining to be a current or future threat to the large aegialian scarab or Giuliani's dune scarab at Big Dune, the Crescent Dunes serican scarab or Crescent Dunes aegialian scarab at Crescent Dunes, or the Crescent Dunes aegialian scarab at San Antonio Dunes because of the low likelihood of mineral development at these areas (the areas are considered to have low mineral potential, there have been few historical requests for minerals in these areas, and there are no current mining applications at these dunes). In addition, before future mining requests could be developed, the BLM would have to evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would be able to provide recommendations to protect these beetles under the NEPA process. We conclude that mining at Lava Dune does not constitute a current threat to the large aegialian scarab or Giuliani's dune scarab because the active lava rock mining operation is outside of the range of these two species of beetles, the BLM has not acted on the pending lava rock stockpiling application in 11 years, and no plans of development have been submitted for the gold mining claims. However, if approved, mining lava rock at Lava Dune would remove up to 15 percent of the total range for the Giuliani's dune scarab (Service 2011b, p. 4) and 7.5 percent of the total range for the large aegialian scarab (Service 2012b, pp. 2–3). We do not consider this to be a significant threat because there is no evidence to indicate that the remaining 85 percent of the Giuliani's dune scarab's range and remaining 92.5 percent of the large aegialian scarab's range would be insufficient to support the biological needs of these two beetle species.

Solar Development

Developing land for solar energy projects on or near the dunes may compact and remove both vegetation and sand, alter surface flows and infiltration of water, and affect temperature and wind patterns. Destruction of vegetation around dunes, disturbance of dune sand, and disruption of reproductive behavior would reduce or eliminate sand dune beetle populations because the larvae of the four beetle species use decomposed organic matter as their primary food source and the adults mate on live vegetation. In addition, sand transport processes and other ecological processes that create habitat for these four species of sand dune beetles may be altered by structures blocking the wind (BLM and DOE 2010, pp. 11.7–6, 11.7–8, 11.7–43, 11.7–68, 11.7–115, 11.7–128). Roads and increased human presence associated with solar development result in indirect effects to dune beetles (e.g., roads and increased human presence may result in increased illegal ORV use, which impacts beetle habitat).

There have been no ROW applications for solar development projects at Crescent Dunes or San Antonio Dunes, except for the solar project currently under construction about 1.6 km (1 mi) west of Crescent Dunes. The Crescent

Dunes Solar Energy Project is 655 ha (1,619 ac) and is located within the range of the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab (BLM case file no. NVN 086292; BLM 2010, pp. 1–2; 75 FR 81307, December 27, 2010; Service 2012a, pp. 1–8). Construction will remove approximately 607 ha (1,500 ac or 2.3 sq mi), which is 10 percent of the total range of the Crescent Dunes aegialian scarab and 11 percent of the total range of the Crescent Dunes serican scarab. It is unlikely that the Crescent Dunes Solar Energy Project will disrupt sand transport processes at Crescent Dunes because the facility will not block the prevailing winds.

In addition, the BLM has proposed to establish a utility-scale solar energy zone about 8.0 km (5 mi) southwest of Crescent Dunes (Millers Solar Energy Zone). A solar energy zone is a priority area within BLM-administered lands that is suited for utility-scale production of solar energy in accordance with the requirements of the Energy Policy Act of 2005 (42 U.S.C. 13201 *et seq.*) (BLM and DOE 2010, p. 1–8). This proposed solar energy zone would not affect the beetles because it does not overlap the range of either species, and it is unlikely that solar developments within the solar energy zone would disrupt sand transport processes because of the distance from Crescent Dunes and facilities would not block the prevailing winds (Service 2012a, p. 2; Parsons 2010, p. 15).

In the future, it is possible that ROW applications for solar development may be filed at Crescent Dunes and San Antonio dunes; however, if applications for solar development are filed, the BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Since 2007, there have been five ROW applications for solar development at Big Dune and none at Lava Dune; however, all the applications at Big Dune have been rescinded. It is possible that solar development projects near Big Dune or Lava Dune may be proposed in the future but at this time, the best available information does not indicate that solar development projects threaten the large aegialian scarab or Giuliani's dune scarab. If applications for solar development are filed, the BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Conclusion—We do not consider solar energy development to threaten the Crescent Dunes aegialian scarab or Crescent Dunes serican scarab now or in the future. Although the Crescent Dunes Solar Energy Project will remove up to 10 percent of the total range of the Crescent Dunes aegialian scarab and 11 percent of the total range of the Crescent Dunes serican scarab, we do not consider the project a significant threat to these beetles because there is no evidence to indicate that the remaining 90 and 89 percent, respectively, of their ranges would be insufficient to support the biological needs of these species, and the project would not significantly alter sand transport processes. The proposed solar energy zone near Crescent Dunes does not overlap the range of either species and would not disrupt sand transport processes. There have been no ROW applications for solar development at San Antonio Dunes. We do not consider solar energy development to pose a threat to the large aegialian scarab or Giuliani's dune scarab now or in the future because there have been no ROW applications filed at Lava Dune, there are no current applications for solar development at Big Dune, and all previous applications at Big Dune have been rescinded. It is unknown how many, if any, future applications for solar development would occur in these areas. However, if there are any applications, the BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Off-Road Recreation

Off-road vehicle (ORV) recreationalists currently use both Crescent Dunes and Big Dune for riding and camping. ORV use is prohibited on Lava Dune (BLM 1998, pp. 21, 23–24). Beetle habitat could be impacted by ORV activity that compacts and redistributes sand beneath plants, destroys live vegetation, and prevents the buildup of decomposed organic matter by uncovering dead sticks and leaves from beneath the vegetation. These habitat impacts could reduce or eliminate sand dune beetle populations because the adult and larvae of these four species of beetle only live under and mate on live vegetation and use decomposed organic matter as their primary food source.

Crescent Dunes—Crescent Dunes is located on BLM-administered lands managed by the Tonopah Field Office (formerly the Battle Mountain District Office, Tonopah Resource Area/Field Station prior to 2008). In 1997, the BLM designated 1,214 ha (3,000 ac) at Crescent Dunes, which includes all of Crescent Dune's 402 ha (996 ac), as a Special Recreation Management Area (SRMA) primarily for ORV use. To reduce potential impacts to dune beetles and their habitat, BLM prohibited ORV use on all vegetated sand areas within the Crescent Dunes SRMA (BLM 1997, p. 21). The Crescent Dunes SRMA encompasses 89 percent of the range for the Crescent Dunes aegialian scarab and 100 percent of the range for the Crescent Dunes serican scarab. The beetles live under live vegetation in loose, sandy areas. Illegal ORV riding over vegetation reduces beetle habitat. To estimate the historical loss of vegetation from ORV use immediately surrounding Crescent Dunes, we reviewed aerial photography of the dunes taken between the 1950s and 2010 (Army Map Service 1952; 1954; USGS 1970a; 1970b; Google Earth 1990, 1996, 1997, 2004, and 2010) and conducted a site visit in January 2012. The vegetation density and distribution at Crescent Dunes appears unchanged since the 1950s (Service 2011b, pp. 1–7), and we did not observe any current or historical evidence of illegal ORV use.

San Antonio Dunes—San Antonio Dunes is located on BLM-administered lands managed by the Tonopah Field Office. This area is open to unrestricted vehicle use (BLM 1997, pp. 20–21, Map 20). Although San Antonio Dunes is open to ORV use, these dunes likely receive relatively little use from ORV recreationalists. Because Crescent Dunes provides more open sand and is closer to Tonopah than San Antonio Dunes (approximately half the distance), San Antonio Dunes likely receives less ORV use than does Crescent Dunes. Additionally, we reviewed high-resolution aerial imagery (Google Earth 2012) and detected no evidence of ORV-user created roads, indicating that ORV use is not heavy at San Antonio Dunes.

Big Dune—Big Dune is located on BLM-administered lands managed by the Pahrump Field Office (formerly a portion of the Las Vegas Field Office prior to 2008) (BLM 1998, pp. 3–41). In 1998, the BLM designated 4,694 ha (11,600 ac) around Big Dune as an SRMA, which included all of Big Dune, which is 305 ha (753 ac) (BLM 1998, pp. 21, 23–24). Within the SRMA, BLM identified 777 ha (1,920 ac) of Big Dune as an Area of Critical Environmental Concern (ACEC) to support all species dependent upon dune habitat, with emphasis on the large aegialian scarab and Giuliani's dune scarab (BLM 1988, pp. 1–24; 1998, pp. 7, 11). To protect habitat for the large aegialian scarab and

Giuliani's dune scarab and to reduce potential impacts to the dune beetles and their habitat, BLM closed an 81-ha (200-ac) area and a 9-ha (23-ac) area to ORV use and prohibited ORV use on all other vegetated areas within the Big Dune SRMA, including the Big Dune ACEC (BLM 1998, pp. 21, 23–24). The Big Dune SRMA and Big Dune ACEC encompass 100 percent of the range for the large aegialian scarab and Giuliani's dune scarab at Big Dune, while the closed portions encompass 18 percent of the range for the Giuliani's dune scarab and 7 percent of the range for the large aegialian scarab (Service 2011b, pp. 1–8; 2012b, pp. 1–8).

Illegal ORV riding over vegetation reduces beetle habitat. To estimate the historical loss of vegetation from ORV use immediately surrounding Big Dune, we reviewed aerial photography of the dunes and adjacent areas taken between the 1940s and 2010 (Army Map Service 1948; USGS 1970a; 1970b; Google Earth 1990, 1996, 1997, 2004, and 2010). ORV users have recreated on Big Dune for the past 60 years (Army Map Service 1948). Historical user-created road establishment has resulted in the loss of approximately 61.5 ha (152 ac) of the vegetation immediately surrounding Big Dune (Service 2011b, pp. 1–8). The density of vegetation around Big Dune has been reduced when compared to vegetation 3.25 km (2 mi) south of the dune (Service 2011b, pp. 1–8). Approximately 8,417 vehicles containing 21,042 visitors recreated at Big Dune in 2010 (BLM 2011c, p. 1). To estimate if there were any recent reductions of beetle habitat resulting from ORV use, we reviewed aerial imagery between 1990 and 2010 and conducted 3 site visits. We found the density of vegetation has decreased; however, the distribution of vegetation at Big Dune has changed little (Service 2011b, pp. 1–7), and we observed few current incidents of plants destroyed by illegal ORV activity (Service 2011a, pp. 2, 6; 2011b, pp. 1–7; 2012b, pp. 1–8). Given this information, it does not appear that the total amount of suitable habitat for the large aegialian scarab and Giuliani's dune scarab has been reduced between 1990 and 2010.

Lava Dune—Lava Dune is located on BLM-administered lands and private land. Approximately 90 percent of the dune complex is on lands administered by the BLM, while the remaining 10 percent is owned by a private mining company (Nye County parcel number 000–158–28). ORV use is prohibited on the portion of Lava Dune administered by the BLM (BLM 1998, pp. 21, 23–24). Because ORV riding is prohibited at Lava Dune, we did not review vegetation changes at Lava Dune from ORV use. We found no information on the frequency of illegal ORV use on the dune, although we observed a set of vehicle tracks on the dune in April 2011 (Service 2011a, pp. 3, 9).

Conclusion—We do not consider legal ORV activity to be a significant threat to any of the four beetle species. ORV activity is prohibited on Lava Dune and restricted to unvegetated slopes within the Big Dune SRMA and the Crescent Dunes SRMA. Each of the four sand dune beetle species considered in this finding is dependent on vegetation for suitable habitat, and unvegetated sand dune slopes are not considered suitable dune beetle habitat. We have no information on dispersal of any of the four dune beetle species or whether ORV activity on unvegetated slopes between patches of suitable habitat affects any of the four species. However, ORV use has not precluded dune beetle dispersal because even though ORV use has occurred at Crescent Dunes and Big Dune for over 60 years, Crescent Dunes serican scarab and Crescent Dunes aegialian scarab are widely distributed at Crescent Dunes, and large aegialian scarab and Giuliani's dune scarab are widely distributed at Big Dune. ORV activity is not restricted to unvegetated slopes at San Antonio Dunes, but because of their location, these dunes receive relatively little ORV recreational use. Ongoing illegal ORV activity results in some level of impacts to these four species of beetle; however, we do not consider illegal ORV activity to be a significant threat because current illegal ORV use is minimal, and future illegal ORV activity is expected to be minimal based on past use trends.

Commercial Filming

The area around Big Dune is popular for commercial filming and still photography. Since 1993, BLM has issued 19 special use permits for film production at Big Dune (BLM 2011d, pp. 1–15). Permit stipulations limit activities to 10 vehicles carrying 30 people and do not authorize new surface disturbance (BLM 1990, p. 2). No filming is allowed in the dune beetle exclosure areas (BLM 1990, p. 3). We conclude that commercial filming does not pose a significant threat to the survival of these four beetle species now or in the future.

Livestock Grazing

There is no livestock grazing at Big Dune and Lava Dune. Crescent Dunes and San Antonio Dunes are located within an active BLM-designated grazing allotment. We found no information on the amount of or the timing of livestock use. However, the soil around these dune complexes has a low potential for forage (vegetation feed for livestock) (NRCS 1972, pp. 23, 81; NRCS 1998, p. 35). We conclude that livestock grazing is not a significant threat to these four beetle species.

Summary of Factor A

Crescent Dunes aegialian scarab and Crescent Dunes serican scarab—The Crescent Dunes aegialian scarab occurs at Crescent and San Antonio Dunes, and the Crescent Dunes serican scarab occurs at Crescent Dunes. We do not consider ORV activity a significant threat to these beetles. BLM policy restricts ORV use to unvegetated areas at Crescent Dunes, and these two beetle species are known to occur only under or very close to vegetation. ORV use at San Antonio Dunes is minimal and does not appear to be impacting vegetation (beetle habitat). Current illegal ORV activity at Crescent Dunes is minimal and future illegal ORV activity is expected to be minimal based on past use trends. We do not consider mining a threat to the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab because there are currently no mining applications at these dunes, and it is unlikely future mining applications would be filed because the mineral potential is low. Although the Crescent Dunes Solar Power Project would remove up to 11 percent of the range for these two beetles, there is no evidence indicating that the remaining portion of their ranges would be insufficient to support the biological needs of these two species. It is unknown how many, if any, future applications for solar development would occur in these areas. However, if there are any applications, the BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process. Based on our assessment of the best scientific and commercial data available concerning present threats to these two beetle species' habitat, we conclude that the present or threatened destruction, modification, or curtailment of their habitat or range is not a threat to the continued existence of these two beetle species.

Large aegialian scarab and Giuliani's dune scarab—The large aegialian scarab and Giuliani's dune scarab occur in two locations: Big Dune and Lava Dune. BLM policy prohibits ORV use at Lava Dune and restricts use to unvegetated areas at Big Dune and these two beetle

species are known to occur only under or very close to vegetation. We do not consider illegal ORV activity to be a significant threat to these two beetle species because impacts to dune beetle habitat from current illegal ORV activity is minimal, and future impacts to dune beetle habitat from illegal ORV use is expected to be minimal based on past use trends. If approved, a pending mining application at Lava Dune would remove up to 15 percent of the range for the Giuliani's dune scarab and the large aegialian scarab. However, because this application has been pending for 11 years, we do not consider it an immediate threat. Furthermore, there is no evidence to suggest that the remaining portion of their ranges would be insufficient to support the biological needs of these beetle species. It is unknown how many, if any, future mining requests would occur at Lava Dune. Although there are no solar applications at Big Dune or Lava Dune, it is unknown how many, if any, future applications for solar development would occur in these areas. However, if there are any future mining requests or applications for solar development, the BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process. Based on our assessment of the best scientific and commercial data available concerning present threats to these two beetle species' habitat and their likely continuation in the future, we conclude that the present or threatened destruction, modification, or curtailment of their habitat or range is not a threat to the continued existence of these two beetle species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no available information indicating that the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, or Giuliani's dune scarab is collected for commercial, recreational, scientific, or educational purposes. Pyle *et al.* (1981, p. 241) note that invertebrates generally are not imperiled by overcollection, and that these particular beetle species are not showy and thus less likely to be collected. We conclude that overutilization is not a threat to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, or Giuliani's dune scarab now or in the future.

Factor C. Disease or Predation

No information is available on the incidence of disease for any of the four beetle species. The only information available on predation is that nighthawks (*Chordeiles* sp.) have been observed preying on adult Giuliani's dune scarabs at Big Dune (Boyd 2010, p. 4; Service 2011a, p. 5). The scarabs were above ground as part of their mating activity, which is thought to be limited to a brief period during evenings in April to May (see ''Biology and Population Abundance'' section above). Except for this brief period of aboveground mating activity by the Giuliani's dune scarab, the life cycle of this and the other three sand dune beetles occurs below ground. No information is available on predation of the beetles during belowground parts of their life cycle. We conclude that disease or predation is not a threat to any of the four beetle species.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the four dune beetles discussed under the other factors. Section 4(b)(1)(A) of the Endangered Species Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *'' We interpret this language to require the Service to consider relevant Federal, State, and Tribal laws and regulations when developing our threat analyses. Regulatory mechanisms, if they exist, may preclude the need for listing if we determine that such mechanisms adequately address the threats to the species such that listing is not warranted.

The Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab are not protected under Nevada State law because they are classified as insects and not wildlife (NRS 555.265). However, the range of each species occurs on Federal lands managed by the BLM, so protection and management of the habitat for each species is determined by Federal laws, regulations, and policies. Relevant Federal laws, regulations, and policies are summarized below.

Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.)—This Act sets forth the BLM's multiple use mandate and requires that the BLM take any action necessary to prevent impacts greater than those that would normally be expected from an activity in compliance with current standards, in compliance with current regulations, and implemented using the best reasonably available technology (i.e., undue and unnecessary degradation). The Federal Land Policy and Management Act's implementing regulations, 43 CFR 2800 and 43 CFR 3000, control administration and authorization of ROWs and mineral management, respectively. These regulations require the BLM to reduce environmental impacts from these ROWs to environmental resources, including these four sand dune beetle species.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)—The NEPA requires all Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment. The NEPA documentation is provided in an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal. As part of BLM policy, for any mining and solar power plant applications to conduct operations in the Crescent Dunes, San Antonio Dunes, Lava Dune, or Big Dune, an analysis will be conducted to evaluate potential effects to these dune beetles and identify possible project alternatives. The Service would have the opportunity to comment on the project alternatives and provide conservation recommendations to protect these beetles. However, the BLM is not required to select an alternative having the least significant environmental impacts and may select an action that will adversely affect these beetles, provided that these effects are disclosed in their NEPA document.

BLM Policy—The BLM classifies all four beetle species as sensitive species (BLM 2003, p. 6). Under their 6840 manual, BLM is required to manage sensitive species and their habitats to minimize or eliminate threats affecting the species or improve the condition of the species' habitat in order to reduce the likelihood of listing under the Act (BLM 2008, pp. 3, 38). The BLM identified and implemented several management actions that conserve habitat for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, aegialian scarab, and Giuliani's dune scarab (BLM 1994, pp. 1–427; BLM 1997, pp. 1–193).

The BLM's management action to conserve the Crescent Dunes aegialian scarab and Crescent Dunes serican

scarab is the prohibition of ORV use on vegetated sand areas within the Crescent Dunes SRMA (BLM 1997, p. 21). The area is closed to high-speed race events (BLM 1997, p. 20, Map 30). The area is also designated as a ROW avoidance area; however, ROWs can be granted (e.g., solar power plants) if no feasible alternative can be found (BLM 1997, p. 19, Map 22). The area is closed to non-energy leasable minerals and subject to no-surface-occupancy restrictions for fluid leasable minerals (BLM 1997, p. 21, Map 34).

Management actions for the large aegialian scarab and Giuliani's dune scarab include: (1) Prohibition of ORV use on Lava Dune; (2) prohibition of ORV use in vegetated areas within the Big Dune SRMA, including the Big Dune ACEC; (3) maintenance of approximately 777 ha (1,920 ac) of sand dune habitat within the Big Dune ACEC in a natural condition; and (4) prohibition of ORV activity within 90 ha (223 ac) of beetle habitat (BLM 1998, pp. 11, 23). Within the Big Dune ACEC, lands are to be retained in Federal ownership; ROWs are not allowed; the area is closed to mining; mineral leasing is subject to no-surface-occupancy stipulations; temporary roads must be reclaimed; and competitive high-speed ORV events are prohibited (competitive non-speed events are allowed) (BLM 1998, p. 7). The stipulations protect the beetles from these threats at Big Dune except illegal ORV activity. Solar development is allowed at Lava Dune and outside the ACEC at Big Dune. Mineral development is allowed at Lava Dune.

Therefore, partly as a result of BLM management actions taken as a result of Federal laws, regulations, and policy, we determined under Factor A that mining, solar development, ORV use, commercial filming, and livestock grazing were not significant threats to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, or Giuliani's dune scarab. Although not protected by State law, we determined under Factor B that collection or any other form of overutilization was not a threat to any of the four beetle species. We also determined that disease or predation was not a threat to any of the four species under Factor C, nor was stochastic events or climate change under Factor E. We conclude that the the inadequacy of existing regulatory mechanisms are not a threat to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Stochastic Events

The large aegialian scarab's and Giuliani's dune scarab's ranges are limited to Big Dune and Lava Dune; the Crescent Dunes aegialian scarab's range is limited to Crescent Dunes and San Antonio Dunes; and Crescent Dunes serican scarab's range is limited to Crescent Dunes. Extreme environmental disasters at these areas, such as earthquakes, hurricanes, tornadoes, severe floods, or severe and frequent winter storms, could impact these species through direct mortality or removal of vegetation. However, this area has one of the lowest frequencies of extreme environmental disasters in the United States (DOE 1986, pp. 3–22, 6–27, 6–32), and any extreme weather phenomena occurring in the desert are of such short duration that no significant effects are expected (DOE 1986, pp. 6–27, 6–32). We do not consider extreme environmental disasters a threat to these four beetle species.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85.) Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764, 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011(entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability

analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all threats that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

We used the web-based tool Climate Wizard to evaluate (1) changes in temperature and precipitation across Nevada during the past 50 years, and (2) projected changes in temperature and precipitation at Crescent Dunes and Big Dune by the 2050s based on 16 general circulation climate models. Across Nevada, temperature has increased by an average of 0.016 degree Celsius (0.029 degree Fahrenheit) per year for a total increase of 0.81 degree Celsius (1.45 degree Fahrenheit) over the past 50 years (*http://www.climatewizard.org/,* accessed April 30, 2012). Precipitation has increased by an average of 0.342 percent per year across Nevada, for a total increase of 17.1 percent over the past 50 years.

For projected changes in temperature and precipitation based on general circulation models, we used Climate Wizard's default setting for emission scenario (the A2 high scenario). At Crescent Dunes, projected increases in temperature by the 2050s range from 1.47 to 3.61 degrees Celsius (2.64 to 6.49 degrees Fahrenheit) across the 16 models, with an average (median) value of 2.88 degrees Celsius (5.18 degrees Fahrenheit) (*http://www.climatewizard.org/,* accessed May 4, 2012). Projected change in precipitation by the 2050s at Crescent Dunes range from a decrease of 30.51 percent to an increase of 19.73 percent across the 16 models, with a median value of 1.73 percent decrease.

At Big Dune, projected increases in temperature by the 2050s range from 1.52 to 3.49 degrees Celsius (2.74 to 6.28 degrees Fahrenheit) across the 16 models, with a median value of 2.82 degrees Celsius (5.07 degrees Fahrenheit) (*http://www.climatewizard.org/,* accessed May 4, 2012). Projected change in precipitation by the 2050s at Big Dune range from a decrease of 27.90 percent to an increase of 39.79 percent across the 16 models, with a median value of 2.36 percent decrease.

The climate in southwestern North America has been becoming increasingly arid during the past century and is projected to continue to become more arid during the 21st century (Seager *et al.* 2007, entire). Seager *et al.* (2007) modeled aridity as a function of precipitation minus evaporation, and evaporation rates increase as temperature increases. Their study area included the southern two-thirds of Nevada, an area that encompasses the range of each of the four beetle species addressed in this finding. The most severe multiyear droughts that have impacted western North America in the recorded past have been attributed to variations in surface sea temperatures in the tropics, particularly persistent La Nina-like events (USGS 2004, entire; Seager *et al.* 2007, p. 1183). Based on their model results, Seager *et al.* (2007, p. 1184) conclude that droughts in the North American Southwest during this century will become more severe than historical droughts because La Nina conditions will be overlaid on a base condition that is drier than any experienced in recent history.

Climate change will thus clearly affect habitat conditions for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab. Increases in atmospheric carbon dioxide, air temperature, and evapotranspiration rates will affect vegetation, and each of the four beetle species is dependent on vegetation for its habitat. However, it is difficult to project how climate change will affect overall vegetation structure and composition because certain plant species may increase in response to these changes, while other plant species may decrease. For example, plant species adapted to desert-like conditions may gain a competitive advantage and increase in cover or density. Also, little is known about the biology of any of the four sand dune beetle species, so it is difficult to know how any potential changes in plant species composition would affect dune beetle habitat suitability. While climate change will undoubtedly affect habitat conditions for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab, there is currently insufficient specific information to conclude that climate change is a significant threat to any of these four beetle species.

Synergistic Interactions Among Threat Factors

We have evaluated individual current and future potential threats to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab. These species face potential threats from mining, solar development, ORV use, commercial filming, livestock grazing, stochastic events, and climate change. In considering whether the threats to a species may be so great as to warrant listing under the Act, we must look beyond the possible impacts of potential threats in isolation and consider the potential cumulative impacts of all of the threats facing a species.

In making this finding, we considered whether there may be cumulative effects to any of the four dune beetle species from the combined impacts of existing threats such that even if each threat individually does not result in population-level impacts, that cumulatively the effects may be significant. We considered whether the combined effects of mining and solar development may result in a significant impact to any of the four beetle species because mining and solar development each has the potential to result in some level of habitat loss. However, we conclude that synergistic effects between mining and solar development are unlikely to result in a significant

overall population impact to any of the four beetle species because the proposed mining and solar development projects occur in different areas and their effects would not overlap. The proposed lava rock mining operation would impact the large aegialian scarab and Giuliani's dune scarab if approved, whereas the Crescent Dunes Solar Energy Project, which is currently being constructed, will impact the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab. ORV use potentially impacts each of the four beetle species, but as a result of BLM policies and management that reduce impacts from ORV use, we conclude that ORV use impacts combined with potential impacts from mining, solar development, commercial filming, and livestock grazing would not be of sufficient severity and scope to result in a significant impact to any of the four dune beetle species. BLM policies and management include prohibition of ORV use anywhere at Lava Dune and within an 81-ha (200-ac) area and a 9-ha (23-ac) area at Big Dune, and restriction of ORV use to unvegetated areas at the rest of Big Dune and all of Crescent Dunes (each of the dune beetle species is known to occur only under or in close proximity to vegetation). Based on its location and lack of evidence of ORV use detected from high-resolution aerial imagery, we believe ORV use at San Antonio Dunes is minimal and thus is unlikely causing a population-level impact to the Crescent Dunes aegialian scarab. As discussed under Factor A, illegal ORV use impacts beetles and their habitat, but we conclude, based on the most current available information, illegal ORV use does not occur with sufficient frequency and geographic scope to cause population-level impacts to any of the four beetle species. It is unknown how many, if any, future requests for mining and solar development would occur in these areas. However, if there are any requests, BLM must evaluate potential effects to these dune beetles and adhere to their sensitive species policy, and the Service would have the opportunity to provide recommendations to protect these beetles under the NEPA process.

Synergistic interactions are possible between effects of climate change and effects of other threats such as mining, solar development, ORV use, and livestock grazing. Increases in carbon dioxide, temperature, and evapotranspiration will affect vegetation, and each of the four dune beetle species is closely associated with the presence of vegetation. However, as noted above in the Climate Change section, uncertainty about how different plant species will respond under climate change, combined with uncertainty about how changes in plant species composition would affect suitability of dune beetle habitat, make projecting possible synergistic effects of climate change on the dune beetle species too speculative at this time. At this point in time, given the complex and uncertain nature of effects associated with climate change and the lack of information on the biology on each of these four dune beetle species, we can only conclude that additional information would be needed to determine whether synergistic interactions between climate change and other threats will impact the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, or Giuliani's dune scarab.

Finding

As required by the Act, we considered the five factors in assessing whether the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab are endangered or threatened throughout all of their ranges. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by these four beetle species.

To ensure that this finding is based on the latest scientific and commercial information on the species, their habitat, and threats occurring, or likely to occur, we examined the petition, information in our files, and other published and unpublished literature. We solicited information from the public, but did not receive any response. We consulted with species and habitat specialists from the BLM, the Service, and NNHP.

We evaluated whether the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab were affected by mining, solar development, and ORV use; however, these impacts are either limited in scope or significant uncertainty exists about if or how they may impact these species. The inadequacy of existing regulatory mechanisms to prevent any of the above factors is not a threat because BLM, by following their policy and through NEPA, has been successful in minimizing manmade impacts to these four beetle species. The best available information does not indicate that overutilization, predation, disease, stochastic events, or climate change is a threat to the continued existence of any of these four beetle species now or in the foreseeable future. There is also no evidence to indicate that synergistic or cumulative effects between the factors would result in significant threats to any of these four beetle species.

Based on our review of the best available scientific and commercial information, the effects of these impacts on the four beetle species do not indicate that the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, or Giuliani's dune scarab is in danger of extinction (endangered) or likely to become endangered within the foreseeable future (threatened), throughout all of its range. Therefore, we find that listing any of these four beetle species as an endangered or threatened species throughout its range is not warranted at this time.

Significant Portion of Its Range

Having determined that the Crescent Dunes aegialian scarab, the Crescent Dunes serican scarab, the large aegialian scarab, and the Giuliani's dune scarab are not endangered or threatened throughout their ranges, we must next consider whether there are any significant portions of their ranges where any of the species is in danger of extinction or is likely to become endangered in the foreseeable future. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April

2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high

threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation, we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

We evaluated the current range of the four beetles to determine if there is any apparent geographic concentration of potential threats for any of the species. The ranges for each of the beetles are relatively small and limited to the local dune system where they are found. We examined potential threats from mining, solar development projects, ORV use, commercial filming, livestock grazing, overutilization, disease or predation, the inadequacy of existing regulatory mechanisms, stochastic events, and climate change. We found no concentration of threats that suggests that any of these four species of dune beetles may be in danger of extinction in a portion of its range. We found no portions of their ranges where potential threats are significantly concentrated or substantially greater than in other portions of their ranges. Therefore, we find that factors affecting each species are essentially uniform throughout their ranges, indicating no portion of the range of any of the four species warrants further consideration of possible endangered or threatened status under the Act. There is no available information indicating that there has been a range contraction for any of the four species, and therefore we find that lost historical range does not constitute a significant portion of the range for the Crescent Dunes aegialian scarab, the Crescent Dunes serican scarab, the large aegialian scarab, or the Giuliani's dune scarab.

We request that you submit any new information concerning the status of, or threats to, the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab to our Nevada Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor these four beetle species and encourage their conservation. If an emergency situation develops for any of these four beetle species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Nevada Fish and Wildlife Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–17526 Filed 7–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120416008–2219–01]

RIN 0648–BB72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 34

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement management measures described in Amendment 34 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would remove the income qualification requirements for renewal of Gulf of Mexico (Gulf) commercial reef fish permits and increase the maximum crew size to four for dual-permitted vessels (i.e. vessels that possess both a charter vessel/headboat permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish) that are fishing commercially. The intent of this rule is to remove permit

requirements that may no longer be applicable to current commercial fishing practices and to improve vessel safety in the Gulf reef fish fishery.

DATES: Written comments must be received on or before August 17, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2012–0025'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and NMFS will post them to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2011–0025'' in the search field and click on ''search''. After you locate the proposed rule, click the ''Submit a Comment'' link in that row. This will display the comment web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of Amendment 34, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at *OIRA Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magunson-Stevens Act) by regulations at 50 CFR part 622.

This rule would implement Amendment 34 to the FMP, which addresses administrative issues relative to earned income requirements for the renewal of commercial Gulf reef fish permits and to the maximum crew size for dual-permitted vessels while commercially fishing. Due to recent changes in the commercial sector of the Gulf reef fish fishery the income qualification requirements and the crew size limit regulations may no longer effectively serve their original purposes.

Measures Contained in This Proposed Rule

If implemented, this rule would eliminate the income qualification requirements for renewal of commercial Gulf reef fish permits and increase the maximum crew size from three to four for dual-permitted vessels.

Eliminating the Income Qualification Requirements for Commercial Gulf Reef Fish Permits

Under the current regulations, an applicant renewing a commercial vessel permit for Gulf reef fish must attest that greater than 50 percent of his/her earned income is derived from commercial fishing (i.e. harvest and first sale of fish) or charter fishing during either of the 2 calendar years preceding the application. Applicants must complete the Income Qualification Affidavit section on the Federal Permit Application for Vessels Fishing in the EEZ (Federal Permit Application) as proof of meeting permit income qualification requirements for commercial Gulf reef fish vessel permits.

This rule proposes to eliminate the income requirement because it is no longer applicable to current commercial fishing practices. The income requirement is not compatible with recent regulatory changes in the Gulf reef fish fishery, such as the implementation of individual fishing quota (IFQ) programs for red snapper and grouper/tilefish species, which account for the majority of Gulf reef fish landings. Regardless of the proportion of a fisherman's income derived from commercial or charter fishing, participation in these IFQ fisheries is restricted to those who possess quota shares or who sell annual allocation. Removing the income requirement will also provide more flexibility to fishermen and allow them to earn income in other occupations. This added flexibility would allow some fishermen to renew their permits even if they did not have the opportunity to earn enough income from fishing. In addition, this income requirement is relatively easy to meet or circumvent, and validation of this income requirement has been difficult. Finally, the elimination of income requirements would also decrease the administrative burden to NMFS and the applicant by simplifying the permit renewal process.

Increasing the Maximum Crew Size for Dual-Permitted Vessels

The final rule for Amendment 1 to the FMP (55 FR 2078, January 22, 1990) established the commercial vessel permit for Gulf reef fish and the three-person crew size for dual-permitted vessels when fishing commercially. In 2006, Amendment 18A to the FMP modified the crew size rule to add the Coast Guard certificate of inspection (COI) provision that allowed vessels with a COI to carry a minimum crew size specified by the COI if it was greater than three. Amendment 18A was intended to resolve conflict between the Council's maximum crew size rule and the Coast Guard's minimum crew size requirements for vessels with a COI, which was at least four.

Historically, limiting the crew size on a dual-permitted vessel when fishing commercially may have served to prevent a vessel from taking out a number of passengers under the pretense of making a charter trip, but subsequently selling the catch. Under current commercial fishing practices, limiting the crew size of a vessel to prevent selling catch caught on a charter trip is no longer a primary concern. IFQ programs now regulate commercially harvested red snapper, grouper, and tilefish species, which constitute the majority of the commercial reef fish landings. In addition, all commercial Gulf reef fish vessels are required to be equipped with vessel monitoring systems. The strict reporting requirements of these management measures make it clear when a vessel is operating as a commercial vessel. The amount of IFQ shares owned by a permit holder limits the amount of fish harvested by a vessel regardless of the crew size. In addition, due to the costs involved with carrying extra crew, there

would be little incentive to exceed the necessary crew size.

Currently, 154 vessels possess both a charter vessel/headboat permit and a commercial vessel permit for Gulf reef fish. These vessel are considered to be dual-permitted vessels. Unless the vessel has a COI, dual-permitted vessels are limited to a three-person maximum crew size. The current crew restriction limits are of particular concern for vessels conducting commercial spearfishing operations. These activities would be considered commercial diving operations under the Occupational Safety and Health Administration (OSHA) regulations. The OSHA regulations for SCUBA diving operations (29 CFR 1910.424(c)) require that: (1) A standby diver is available while the SCUBA diver is in the water and (2) the SCUBA diver must be either line-tended or accompanied by another diver with continuous visual contact. The OSHA regulations aim to establish safe operating procedures for conducting commercial SCUBA diving; however, the three-person crew limit for dual-permitted vessels impairs the crew's ability to comply with OSHA and decreases the safety at sea, which violates National Standard 10 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(10)). Based on OSHA regulations, if two divers are underwater spearfishing, the third crewmember at the surface would need to handle the vessel and be the standby diver. If it is necessary to have two crew members at the surface, only one diver could be underwater and would need to be line-tended. Spearfishing while being line-tended could cause additional safety issues.

In addition, the Coast Guard Diving Policies and Procedures Manual (2009) states that ''[a] minimum of four personnel consisting of a diving supervisor, diver, diver tender and a standby diver are required to conduct SCUBA operations.'' While this is not a regulation applicable to commercial spearfishing vessels, it provides guidance to increase safety of the diving personnel.

This rule proposes to increase the crew size from three to four for dual-permitted vessels to improve the safety at sea issues while commercially spearfishing, which would comply with National Standard 10 of the Magnuson-Stevens Act. In addition, it allows commercial spearfishing vessels to comply with the OSHA diving regulations and the U.S. Coast Guard guidance for conducting diving operations.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the AA has determined that this proposed rule is consistent with Amendment 34, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to eliminate existing income qualification requirements that may no longer be applicable to the current commercial fishing environment and to improve vessel safety in the Gulf reef fish fishery. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This rule, if implemented, would be expected to directly affect 920 vessels that possess a commercial reef fish permit. Among these entities, 154 vessels also possess a reef fish for-hire permit. These vessels would be affected by both actions in this proposed rule. The average commercial vessel in the reef fish fishery is estimated to earn approximately $48,000 (2010 dollars).

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charterboat is estimated to earn approximately $89,000 (2010 dollars) in annual revenue, while the average headboat is estimated to earn approximately $469,000 (2010 dollars). The average revenue profile of dual-permitted vessels is not available.

There have been no other small entities identified that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The revenue threshold for a business involved in the for-hire fishing industry is $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

Neither action in this proposed rule would be expected to result in any reduction in profits for any small entities. The two proposed actions would either eliminate or lessen a current restriction. The proposed elimination of an income requirement for the Gulf commercial reef fish permit is expected to provide the opportunity for fishermen to increase income from non-fishing occupations without jeopardizing their ability to renew their commercial reef fish permit. This would also eliminate the pressure to continue to fish to maintain fishing income to satisfy a permit requirement when personal, economic, or other factors may suggest fishing should not occur. Finally, this rule would reduce the reporting and recordkeeping burdens currently imposed on applicants. In particular, applicants would no longer be required to complete the Income Qualification Affidavit section on the Federal Permit Application for Vessels Fishing in the EEZ (Federal Permit Application) as proof of meeting permit income qualification requirements for commercial Gulf reef fish vessel permits. As a result, although the effects are not quantifiable with available data, this proposed action would be expected to increase the economic benefits to small entities.

The proposed increase in the maximum crew size from three to four persons for dual-permitted vessels would allow increased flexibility for affected vessels to carry the number of crew best suited to the needs or conditions of the trip. As a result, although the effects are again unquantifiable with available data, increased economic benefits would be expected to accrue to fishermen as a result of this increased flexibility. Therefore, the economic effects on small entities of this proposed rule, if implemented, are expected to be positive and not constitute a significant economic impact on a substantial number of small entities.

Because this proposed rule, if implemented, would not be expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond

to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. NMFS estimates the removal of the income qualification requirements for commercial Gulf reef fish permit holders will result in a net decrease in the time to complete the Federal Permit Application (for all applicants), however, the current burden estimate (20 minutes per applicant) to complete the application form would not decrease because the time to complete the Income Qualification Affidavit is minimal compared to the time to complete the entire application.

These requirements have been submitted to OMB for approval. NMFS seeks public comment regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 13, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition for ''charter vessel'' is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish. A charter vessel that has a charter vessel permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than four persons aboard, including operator and crew. A charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12 hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

* * * * *

3. In § 622.4, paragraphs (m)(3), (m)(4), and (m)(5) are removed; paragraph (m)(6) is redesignated as paragraph (m)(3); and paragraphs (a)(2)(v) and (m)(2) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2)(xiv) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish.

* * * * *

(m) * * *

(2) A permit holder may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity. A permit holder may also transfer the commercial vessel permit for Gulf reef fish to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.

* * * * *

[FR Doc. 2012–17495 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 138
Wednesday, July 18, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0051]

Notice of Request for Approval of a New Information Collection; National Animal Health Monitoring System; Layers 2013 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of a new information collection activity; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate the Layers 2013 Study, an information collection to support the U.S. poultry industry.

DATES: We will consider all comments that we receive on or before September 17, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0051-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0051, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0051* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue Building B MS 2E6, Fort Collins, CO 80526; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Layers 2013 Study.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection activity.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS would like to conduct the Layers 2013 Study, which will be used to collect information to:

- Estimate flock-level prevalence of *Salmonella* enteritidis.
- Identify potential risk factors with *Salmonella* enteritidis presence to support and enhance quality assurance programs.
- Describe biosecurity measures and management practices being used by the industry that are potentially related to the presence of *Salmonella* enteritidis.

Through the Layers 2013 Study, APHIS will collect data, voluntarily, from individual producers involved in the U.S. table egg layer industry. The study questionnaire will be administered by Veterinary Services personnel. No national, cross-company study on the table egg layer industry has been conducted since the National Animal Health Monitoring Systems' (NAHMS) Layers '99 Study.

On March 20, 2012, NAHMS was recognized by Office of Management and Budget (OMB) as a statistical unit under Title V of the E-Governement Act of 2002, Public Law 107–347, also known as the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). All information acquired under the Layers 2013 Study will be used for statistical purposes only and will be treated as confidential in accordance with CIPSEA guidelines. Only NAHMS staff and designated agents will be permitted access to individual-level data.

We are asking OMB to approve our use of this information collection activity for 2 years.

The purpose of this notice is to solicit comments from the public (as well as agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.625 hours per response.

Respondents: Egg producers.

Estimated annual number of respondents: 1,344.

Estimated annual number of responses per respondent: 1.

Estimated annual number of response hours: 1,344.

Estimated total annual burden on respondents: 840. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17535 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0054]

Notice of Request for a Revision to and Extension of Approval of an Information Collection; Specimen Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and an extension of approval of an information collection associated with livestock disease surveillance programs.

DATES: We will consider all comments that we receive on or before September 17, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0054-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0054* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding livestock disease surveillance programs, contact Dr. Matt Messenger, Staff Entomologist, VS–NAHPP, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 851–3421. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Specimen Submission.

OMB Number: 0579–0090.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing the interstate spread of livestock diseases and for eradicating such diseases from the United States when feasible.

In connection with this mission, the Veterinary Services (VS) program of the USDA's Animal and Plant Health Inspection Service conducts disease surveillance programs. The VS Form 10–4 and its supplemental sheet (VS Form 10–4A) are critical components of these programs. They are routinely used whenever specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to our National Veterinary Services Laboratories for disease testing.

VS Form 5–38, Parasite Submission Form, is also being added to this collection. The Cattle Fever Tick Eradication Program and the National Tick Surveillance Program rely on the information submitted on VS Form 5–38, which was inadvertently omitted from previous submissions.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.33 hours per response.

Respondents: State veterinarians, accredited veterinarians, animal health technicians, other State personnel who are qualified and authorized to collect and submit specimens for laboratory analysis, and herd owners.

Estimated annual number of respondents: 3,208.

Estimated annual number of responses per respondent: 8.7594.

Estimated annual number of responses: 28,100.

Estimated total annual burden on respondents: 9,273 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17541 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0057]

Notice of Request for Extension of Approval of an Information Collection; Brucellosis Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Cooperative State-Federal Brucellosis Eradication Program.

DATES: We will consider all comments that we receive on or before September 17, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0057-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0057, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket

may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0057* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Cooperative State-Federal Brucellosis Eradication Program, contact Dr. Debbi Donch, Brucellosis Program Manager, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 851–3559. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: State-Federal Brucellosis Eradication Program.

OMB Number: 0579–0047.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests and for eradicating such diseases when feasible.

Brucellosis is a contagious disease that primarily affects cattle, bison, and swine. It causes the loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. The continued presence of brucellosis in a herd seriously threatens the health of other animals. Brucellosis has caused devastating losses to farmers in the United States over the last century.

The State-Federal Brucellosis Eradication Program, a national cooperative program, is working to eradicate this serious disease of livestock from the United States. The program uses a system of State and area classifications, movement restrictions, surveillance programs, extensive epidemiological investigations, and other measures to prevent its spread and eradicate the disease.

These measures require the use of many information collection activities and associated forms, including applications for validated brucellosis-free herd or brucellosis classification or reclassification of a State or area; monthly reports of brucellosis eradication activities and surveillance activities; quarterly reports of swine brucellosis eradication activities; brucellosis test records; reports of backtags applied; brucellosis ring test rack charts and patron lists; calfhood vaccination records; field investigations of brucellosis market test reactors; logs for market cattle test reactors; reports of epidemiologic investigations of brucellosis reactor herds; permits for movement of animals; appraisals and indemnity claims for animals destroyed; justifications for herd depopulation; and agreements for complete herd depopulation.

These information collection activities are essential in determining the brucellosis status of an area and helping herd owners by allowing the timely detection and elimination of a serious disease.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.260594393 hours per response.

Respondents: Commercial livestock farm owners and/or managers; animal agriculture-related business owners and/or managers; accredited veterinarians; animal agriculture-related agencies and organizations; breed registry agencies; agriculture extension agents; fair and exhibition officials; owners, operators, and/or managers of livestock markets; livestock dealers, owners, operators, and/or managers of slaughter establishments and dairy plants; and State animal health officials and laboratory personnel.

Estimated annual number of respondents: 89,464.

Estimated annual number of responses per respondent: 10.79981892.

Estimated annual number of responses: 966,195.

Estimated total annual burden on respondents: 251,785 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17544 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0045]

General Conference Committee of the National Poultry Improvement Plan; Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary of Agriculture is soliciting nominations for the election of regional membership for the General Conference Committee of the National Poultry Improvement Plan.

DATES: Consideration will be given to nominations received on or before September 4, 2012.

ADDRESSES: Completed nomination forms should be sent to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. C. Stephen Roney, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1506 Klondike Road, Suite 300, Conyers, GA 30094–5173, (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP) is the

Secretary's Advisory Committee on poultry health. The Committee serves as a forum for the study of problems relating to poultry health and, as necessary, makes specific recommendations to the Secretary concerning ways the U.S. Department of Agriculture may assist the industry in addressing these problems. The Committee assists the Department in planning, organizing, and conducting the Biennial Conference of the NPIP. The Committee recommends whether new proposals should be considered by the delegates to the Biennial Conference and serves as a direct liaison between the NPIP and the United States Animal Health Association.

Terms will expire for current regional members of the Committee in September 2012. We are soliciting nominations from interested organizations and individuals to replace members on the Committee for the South Atlantic Region (Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Puerto Rico, South Carolina, Virginia, and West Virginia), South Central Region (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas), and West North Central Region (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota). There must be at least two nominees for each position. Nomination forms are available on the Internet at *http://www.ocio.usda.gov/forms/doc/AD–755.pdf* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. To ensure the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent underrepresented groups (minorities, women, and persons with disabilities). At least one nominee from each of the three regions must be from an underrepresented group. The voting will be by secret ballot of official delegates from the respective region, and the results will be recorded.

Done in Washington, DC, this 12th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17534 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) of Applications for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year (FY) 2012

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the timeframe to submit pre-applications for Section 514 Farm Labor Housing (FLH) loans and Section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers and for the purchase and substantial rehabilitation of an existing non-farm labor housing (FLH) property. The intended purpose of these loans and grants is to increase the number of available housing units for domestic farm laborers. This Notice describes the method used to distribute funds, the application process, and submission requirements.

DATES: The deadline for receipt of all applications in response to this Notice is 5:00 p.m., local time to the appropriate Rural Development State Office on September 17, 2012. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline unless date and time is extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

Applicants wishing to apply for assistance must contact the Rural Development State Office serving the State of the proposed off-farm labor housing project in order to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact is under Section VII of this Notice.

FOR FURTHER INFORMATION CONTACT: Mirna Reyes-Bible, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0781 (Room 1243–S), USDA, Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone: (202) 720–1753 (This is not a toll free number), or via email: *Mirna.ReyesBible@wdc.usda.gov*. If you have questions regarding Net Zero Energy Consumption and Energy Generation please contact Carlton Jarratt, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division at (804) 287–1524 or via email: *carlton.jarrat@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0189.

Overview Information

Federal Agency Name: Rural Development.

Funding Opportunity Title: NOFA for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2012.

Announcement Type: Initial Notice inviting applications from qualified applicants for Fiscal Year 2012.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.405 and 10.427.

DATES: The deadline for receipt of all applications in response to this is 5 p.m., local time to the appropriate Rural Development State Office on September 17, 2012. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline unless the date and time is extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

I. Funding Opportunities Description

The funds available for FY 2012 Off-Farm Labor Housing are $20,790,629.57 for Section 514 loans, up to $7,100,000 for Section 516 grants, and $2,500,000 for FLH Rental Assistance.

II. Award Information

Applications for FY 2012 will only be accepted through the date and time listed in this Notice. Depending on the feasibility of the loan underwriting, final loan and grant levels may fluctuate from the initial amount considered with

the pre-application, and all awards are subject to availability of funding. Once the Agency has committed 70 percent of the available FY 2012 program funds to new construction applications, no further funding will be available for new construction applications until after August 31, 2012. If funding is available after August 31, 2012, then new construction applications will be considered and compete for funding using this NOFA's scoring criteria without regard to the aforementioned funding limitations. Individual requests may not exceed $3 million (total loan and grant). No State may receive more than 30 percent of available FLH funding distributed in FY 2012. If there are insufficient applications from around the country to exhaust Sections 514 and 516 funds available, the Agency may then exceed the 30 percent cap per State. Section 516 off-farm FLH grants may not exceed 90 percent of the total development cost (TDC) of the housing as defined in 7 CFR part 3560.11. Applicants that will use leveraged funding must include in the pre-application written evidence from the third-party funder that an application for those funds has been submitted and accepted. If leveraged funds are in the form of tax credits, the applicant must include in its pre-application written evidence that a tax credit application has been submitted and accepted by the Housing Finance Agency (HFA). Applications that will receive leveraged funding must have firm commitments in place for all of the leveraged funding within 12 months of the issuance of a ''Notice of Preapplication Review Action,'' Handbook Letter 103 (3060).

Rental Assistance and operating assistance will be available for new construction in FY 2012. Operating assistance is explained at 7 CFR part 3560.574 and may be used in lieu of tenant-specific rental assistance (RA) in off-farm labor housing projects that serve migrant farm workers as defined in 7 CFR part 3560.11 that are financed under section 514 or section 516(h) of the Housing Act of 1949, as amended (42 U.S.C. 1484 and 1486(h) respectively), and otherwise meet the requirements of 7 CFR part 3560.574. Owners of eligible projects may choose tenant-specific RA or operating assistance, or a combination of both; however, any tenant or unit assisted with operating assistance may not also receive RA.

III. Eligibility Information

A. Housing Eligibility

Housing that is constructed with FLH loans and/or grants must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, off-farm FLH must be managed in accordance with 7 CFR part 3560. In addition, off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless at which farm they work. Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)) defines domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his or her income from the primary production of agricultural or aquacultural commodities in the unprocessed or processed stage, and also includes the person's family.

B. Tenant Eligibility

Tenant eligibility is limited to persons who meet the definition of a ''disabled domestic farm laborer,'' or ''a domestic farm laborer,'' or ''retired domestic farm laborer,'' as defined in 7 CFR Section 3560.11. Farm workers who are admitted to this country on a temporary basis under the Temporary Agricultural Workers (H–2A Visa) program are not eligible to occupy Section 514/516 off-farm FLH.

C. Applicant Eligibility

1. To be eligible to receive a Section 516 grant for off-farm FLH, the applicant must be a broad-based nonprofit organization, including community and faith-based organizations, a nonprofit organization of farm workers, a federally recognized Indian tribe, an agency or political subdivision of a State or local government, or a public agency (such as a housing authority). The applicant must be able to contribute at least one-tenth of the TDC from non-Rural Development resources which can include leveraged funds.

2. To be eligible to receive a Section 514 loan for off-farm FLH, the applicant must be a broad-based nonprofit organization, including community and faith-based organizations, a nonprofit organization of farm workers, a federally recognized Indian tribe, an agency or political subdivision of a State or local government, a public agency (such as a housing authority), or a limited partnership which has a nonprofit entity as its general partner, and

i. Be unable to provide the necessary housing from its own resources; and

ii. Except for State or local public agencies and Indian tribes, be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents.

iii. Broad-based nonprofit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

IV. Administrative Requirements

A. Cost Sharing or Matching

Section 516 grants for off-farm FLH may not exceed the lesser of 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

B. Other Requirements

The following requirements apply to loans and grants made in response to this Notice:

1. 7 CFR part 1901, subpart E, regarding equal opportunity requirements;

2. For grants only, 7 CFR part 3015, 3016 or 3019 (as applicable) and 7 CFR 3052, which establishes the uniform administrative and audit requirements for grants and cooperative agreements to State and local governments and to nonprofit organizations;

3. 7 CFR part 1901, subpart F, regarding historical and archaeological properties;

4. 7 CFR part 1940, subpart G, regarding environmental assessments;

5. 7 CFR part 3560, subpart L, regarding the loan and grant authorities of the off-farm FLH program;

6. 7 CFR part 1924, subpart A, regarding planning and performing construction and other development;

7. 7 CFR part 1924, subpart C, regarding the planning and performing of site development work;

8. For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)(5) and implementing regulations published at 29 CFR parts 1, 3, and 5;

9. All other requirements contained in 7 CFR part 3560, regarding the section 514/516 off-farm FLH program; and

10. Please note that grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain registration in the Central Contractor Registration (CCR) prior to submitting a pre-application pursuant to 2 CFR part 25.200(b). In addition, an entity applicant must maintain registration in the CCR database at all times during which it has an active Federal award or an application or plan under construction by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR part 170.110(b), the applicant must have

the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR part 170.200(b).

V. Application and Submission Information

A. Pre-Application Submission

The application process will be in two phases: The initial pre-application (or proposal) and the submission of a final application. Only those pre-applications or proposals that are selected for further processing will be invited to submit final applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded pre-application may be selected for further processing. All pre-applications for Sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice. Incomplete pre-applications will not be reviewed and will be returned to the applicant. No pre-application will be accepted after 5:00 p.m., local to the appropriate Rural Development State Office on September 17, 2012 unless date and time are extended by another Notice published in the **Federal Register**.

Pre-applications can be submitted either electronically using the FLH Pre-application form found at: [*http://www.rurdev.usda.gov/HAD-Farm_Labor_Grants.html*] or in hard copy obtained from and submitted to the appropriate Rural Development Office where the project will be located. Applicants are strongly encouraged, but not required, to submit the pre-application electronically. The electronic form contains a button labeled ''Send Form.'' By clicking on the button, the applicant will receive an email with an attachment that includes the electronic form the applicant filled out as a data file with a .PDF extension. In addition, an auto-reply acknowledgement will be sent to the applicant when the electronic Loan Proposal form is received by the Agency unless the sender has software that will block the receipt of the auto-reply email. The State Office will record pre-applications received electronically by the actual date and time when all attachment are received at the State Office.

Submission of the electronic section 514 Loan Proposal form does not constitute submission of the entire proposal package which requires additional forms and supporting documentation as listed within this Notice. You may use one of the following three options for submitting the entire proposal package comprising of all required forms and documents. On the Loan Proposal form you can indicate the option you will be using to submit each required form and document.

(1) *Electronic Media Option.* Submit all forms and documents as read-only Adobe Acrobat files on electronic media such as CDs, DVDs, or USB drives. For each electronic device submitted, the applicant should include a Table of Contents of all documents and forms on that device. The electronic media should be submitted to the Rural Development State Office listed in this Notice where the property is located. Any forms and documents that are not sent electronically, including the check for credit reports, must be mailed to the Rural Development State Office.

(2) *Email Option.* On the Loan Proposal form you will be asked for a Submission Email Address. This email address will be used to establish a folder on the USDA server with your unique email address. Once the Loan Proposal form is processed, you will receive an additional email notifying you of the email address that you can use to email your forms and documents. **Please Note:** All forms and documents must be emailed from the same Submission Email Address. This will ensure that all forms and documents that you send will be stored in the folder assigned to that email address. Any forms and documents that are not sent in via the email option must be submitted on an electronic media or in hard copy form to the Rural Development State Office.

(3) *Hard Copy Submission to the Rural Development State Office.* If you are unable to send the proposal package electronically using either of the options listed above, you may send a hard-copy of all forms and documents to the USDA Rural Development State Office where the property is located. Hard copy pre-applications received on or before the deadline date will receive the close of business time of the day received as the receipt time. Hard copy pre-applications must be received by the submission deadline and no later than 5:00 p.m., local time, September 17, 2012. Assistance for filling electronic and hard cop pre-applications can be obtained from any Rural Development State Office.

For electronic submissions, there is a time delay between the time it is sent and the time it is received depending on network traffic. As a result, last-minute submissions sent before the deadline date and time could well be received after the deadline date and time because of the increased network traffic. Applicants are reminded that all submissions received after the deadline date and time will be rejected, regardless of when they were sent.

If you receive a loan or grant award under this NOFA, USDA reserves the right to post all information not protected under the Privacy Act and submitted as part of the pre-application/application package on a public Web site with free and open access to any member of the public.

If a pre-application is accepted for further processing, the applicant must submit a complete, final application, acceptable to Rural Development prior to the obligation of Rural Development funds. If the pre-application is not accepted for further processing the applicant will be notified of appeal rights under 7 CFR part 11.

B. Pre-Application Requirements

1. The pre-application must contain the following:

i. A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan and grant requested.

(g) For grants of federal financial assistance (including loans and grants, cooperative agreements, etc.), the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number and registration in the Central Contractor Registration (CCR) database in accordance with 2 CFR part 25. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via Internet at *http://www.dnb.com/us/.* Additional information concerning this requirement can be obtained on the Grants.gov Web Site at *http://www.grants.gov.* Similarly, applicants may register for the CCR at: *https://uscontractorregistration.com* or by calling 1–877–252–2700.

ii. Awards made under this Notice are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, O.L. No. 112–55 Division A section 735 and 739 regarding corporate

felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete and include in the pre-application paragraph (a) of this representation, and all corporate applicants also must complete paragraph (b) and (c) of this representation:

(a) Applicant _____ [insert applicant name] is __ is not __ (check one) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa. Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands.

(b) Applicant _____ [insert applicant name] has __ has not __ (check one) has been convicted of a felony criminal violation under Federal or state law in the 24 months preceding the date of application Applicant has __ has not __ (check one) had any officer of agent of the Applicant convicted of a felony criminal violation for actions taken on behalf of the Applicant under Federal or state law in the 24 months preceding the date of the signature on the pre-application.

(c) Applicant _____ [insert applicant name] has __ has not __ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting tax liability.

iii. A narrative verifying the applicant's ability to meet the eligibility requirements stated earlier in this notice. If an applicant is selected for further processing, Rural Development will require additional documentation as set forth in a Conditional Commitment in order to verify the entity has the legal and financial capability to carry out the obligation of the loan.

iv. Standard Form 424, ''Application for Federal Assistance,'' can be obtained at: *https://www.grants.gov* or from any Rural Development State Office listed in Section VII of this Notice.

v. For loan pre-applications, current (within 6 months of pre-application date) financial statements with the following paragraph certified by the applicant's designated and legally authorized signer:

I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

vi. For loan pre-applications, a check for $40 from applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by Rural Development.

vi. Evidence that the applicant is unable to obtain credit from other sources. Letters from credit institutions which normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided. (**Note:** Not required from State or local public agencies or Indian tribes.)

vii. If a FLH grant is desired, a statement concerning the need for a FLH grant. The statement should include preliminary estimates of the rents required with and without a grant.

viii. A statement of the applicant's experience in operating labor housing or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (i.e., obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

ix. A brief statement explaining the applicant's proposed method of operation and management (i.e., on-site manager, contract for management services, etc.). As stated earlier in this Notice, the housing must be managed in accordance with the program's management regulation, 7 CFR part 3560 and tenancy is limited to ''disabled domestic farm laborers,'' ''domestic farm laborers,'' and ''retired domestic farm laborers,'' as defined in 7 CFR part 3560.11.

xi. Applicants must also provide:

(a) A copy of, or an accurate citation to, the special provisions of State law under which they are organized, a copy of the applicant's charter, Articles of Incorporation, and By-laws;

(b) The names, occupations, and addresses of the applicant's members, directors, and officers; and

(c) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

xii. A preliminary market survey or market study to identify the supply and demand for labor housing in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. Documentation must be provided to justify a need within the intended market area for the housing of ''domestic farm laborers,'' as defined in 7 CFR Section 3560.11. The documentation must take into account disabled and retired farm workers. The preliminary survey should address or include the following items:

(a) The annual income level of farmworker families in the area and the probable income of the farm workers who will likely occupy the proposed housing;

(b) A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (i.e., single individuals as opposed to families);

(c) General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers;

(d) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (i.e., will they rent to large families, do they require annual leases, etc.);

(e) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(f) A description of the units proposed, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility, estimated development timeline, estimated total development cost, and applicant contribution; and

(g) The applicant must also identify all other sources of funds, including the dollar amount, source, and commitment status. (**Note:** A Section 516 grant may not exceed 90 percent of the total development cost of the housing.) The applicant must submit a checklist, certification, and signed affidavit by the project architect or engineer, as applicable, for any energy programs listed in Section IV the applicant intends to participate in.

xiii. The following forms are required:

(a) A completed Form RD 1940–20, ''*Request for Environmental Information,*'' and a description of

anticipated environmental issues or concerns. The form can be found at *http://www.rurdev.usda.gov/regs/forms/1940-20.pdf.*

(b) A prepared HUD Form 935.2A, ''Affirmative Fair Housing Marketing Plan (AFHM) Multi-family Housing,'' in accordance with 7 CFR 1901.203(c). The plan will reflect that occupancy is open to all qualified ''domestic farm laborers,'' regardless of which farming operation they work and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The form can be found at *http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf.*

(c) A proposed operating budget utilizing Form RD 3560–7, ''*Multiple Family Housing Project Budget/Utility Allowance,*'' can be found at *http://www.rurdev.gov/regs/forms/3560-07.pdf.*

(d) An estimate of development cost utilizing Form RD 1924–13, ''*Estimate and Certificate of Actual Cost,*'' can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF.*

(e) Form RD 3560–30, ''*Certification of no Identity of Interest (IOI),*'' can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-30.PDF* and Form RD 3560–31, ''Identity of Interest Disclosure/Qualification Certification,'' can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-31.PDF.*

(f) Form HUD 2530, ''*Previous Participation Certification,*'' can be found at *http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf.*

(g) If requesting RA or Operating Assistance, Form RD 3560–25, ''*Initial Request for Rental Assistance or Operating Assistance*,'' can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-25.PDF.*

(h) Form RD 400–4, ''*Assurance Agreement,*'' can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.* Applicants for revitalization, repair, and rehabilitation funding are to apply through the Multi-Family Housing Revitalization Demonstration Program (MPR).

(i) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF–424 to the applicant's state clearinghouse for intergovernmental review. If the applicant is located in a state that does not have a clearinghouse, the applicant is not required to submit the form.

xiv. Evidence of site control, such as an option contract or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

xv. Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials. The housing must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards.

xvi. A supportive services plan, which describes services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. Letters of intent from service providers are acceptable documentation at the pre-application stage.

xvii. A sources and uses statement which shows all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the sources and uses statement.

xviii. A separate one-page information sheet listing each of the ''Pre-Application Scoring Criteria,'' contained in this Notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria.

xix. Applicants are encouraged, but not required, to include a checklist of all of the pre-application requirements and to have their pre-application indexed and tabbed to facilitate the review process;

xx. Evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic Preservation Officer (THPO). A letter from the SHPO and/or THPO where the off-farm labor housing project is located, signed by their designee will serve as evidence of compliance.

VI. Pre-Application Review Information

All applications for Sections 514 and 516 funds must be filed electronically or with the appropriate Rural Development State Office and meet the requirements of this Notice. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the pre-application.

A. *Selection Criteria.* Section 514 loan funds and section 516 grant funds will be distributed to States based on a national competition, as follows:

1. Rural Development State Office will accept, review, and score pre-applications in accordance with this Notice. The scoring factors are:

i. The presence of construction cost savings, including donated land and construction leverage assistance, for the units that will serve program-eligible tenants. The savings will be calculated as a percentage of the Rural Development TDC. The percentage calculation excludes any costs prohibited by Rural Development as loan expenses, such as a developer's fee. Construction cost savings includes, but is not limited to, funds for hard construction costs, and State or Federal funds which are applicable to construction costs. A minimum of ten percent cost savings is required to earn points; however, if the total percentage of cost savings is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. To count as cost savings for purposes of the selection criteria, the applicant must submit written evidence from the third-party funder that an application for those funds has been submitted and accepted points will be awarded in accordance with the following table using rounding to the nearest whole number.

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0

ii. The presence of operational cost savings, such as tax abatements, non-Rural Development tenant subsidies or donated services are calculated on a per-unit cost savings for the sum of the savings. Savings must be available for at least 5 years and documentation must be provided with the application demonstrating the availability of savings for 5 years. To calculate the savings, take the total amount of savings and divide it by the number of units in the project that will benefit from the savings to obtain the per unit cost savings. For non-Rural Development tenant subsidy, if the value changes during the five-year calculation, the applicant must use the

lower of the non-rural development tenant subsidy to calculate per-unit cost savings. For example, a 10 unit property with 100 percent designated farm labor housing units receiving $20,000 per year non-rural development subsidy yields a cost savings of $100,000 ($20,000*5 years); resulting to a $10,000 per-unit cost savings ($100,000/10 units).

To determine cost savings in a mixed income complex that will serve other income levels than farm labor housing income-eligible tenants, use only the number of units that will serve farm labor housing income-eligible tenants. Round percentages to the nearest whole number, rounding up at 0.50 and above and down at 0.49 and below.

Use the following table to apply points.

Per-unit cost savings	Points
Above $15,000	20
$10,001–$15,000	18
$7,501–$10,000	16
$5,001–$7,500	12
$3,501–$5,000	10
$2,001–$3,500	8
$1,000–$2,000	5

iii. Percent of units for seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more units used for seasonal, temporary, or migrant housing.)

iv. Presence of tenant services.

(a) Up to 10 points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include, but are not limited to, transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers.

(b) Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant.

V. Energy Initiative Properties

(a) *Energy Initiatives* Properties may receive a maximum of 65 points for energy initiatives. Projects may either be New Construction or Purchase and Rehabilitation of Existing Non-Farm Labor Housing Property. Depending on the scope of work, properties may earn ''energy initiative'' points in one or two categories: (1) New Construction or Gut Rehabilitation, or (2) General Rehabilitation. Projects will be eligible for one category or the two, but not both. The project architect's affidavit should specify which category is applicable.

Properties in any category also may receive points for Energy Generation and Green Property Management.

Energy programs including LEED for Homes, Green Communities, etc., will each have an initial checklist indicating prerequisites for participation in its energy program. The applicable energy program checklist will establish whether prerequisites for the energy program's participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable. The checklist and affidavit must be submitted together with the loan application.

1. *Energy Conservation for New Construction or Gut Rehabilitation of an Existing Building (maximum 55 points).* Projects may be eligible for up to 55 points when the pre-application includes a written certification by the applicant to participate in the following energy efficiency programs.

The points will be allocated as follows:

• Participation in the EPA's Energy Star for Homes V3 program (20 points). *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_bldr* or

• Participation in the Green Communities program by the Enterprise Community Partners. (30 points) *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities* or

• Participation in one of the following two programs will be awarded points for certification.

Note: Each program has four levels of certification. State the level of certification that the applicant plans will achieve in their certification:

• LEED for Homes program by the United States Green Building Council (USGBC): *http://www.usgbc.org/homes.*

—Certified Level (30 points), or
—Silver Level (35 points), or
—Gold Level (40 points), or
—Platinum Level (45 points), or

• The National Association of Home Builders (NAHB) ICC 700–2008 National Green Building Standard TM: *http://www.nahb.org.*

—Bronze Level (30 points), or
—Silver Level (35 points), or
—Gold Level (40 points), or
—Emerald Level (45 points) and

• Participation in the Department of Energy's Builder's Challenge program. (8 points) *http://www1.eere.energy.gov/builders/challenge/* and

• Participation in local green/energy efficient building standards; Applicants who participate in a city, county or municipality program, will receive an additional 2 points. The applicant should be aware of and look for additional requirements that are sometimes embedded in the third-party program's rating and verification systems. (2 points)

2. *Energy Conservation for General Rehabilitation (maximum 32 points).* Pre-applications for the purchase and substantial rehabilitation of non-program MFH and related facilities in rural areas may be eligible to receive 32 points for the following initiatives.

• Participation in the EPA's Energy Star for Homes V3 program will be awarded 30 points for any project that qualifies for the program. (30 points) *http://www.enterprisecommunity.com/csolutions-and-innovation/enterprise-green-communities* and

Participation in local green/energy efficient building standards; Applicants who participate in a city, county or municipality program, will receive an additional 2 points. The applicant should be aware of and look for additional requirements that are sometimes embedded in the third-party programs' rating and verification system. (2 points)

3. *Energy Generation (maximum 5 points).* Pre-applications for new construction or purchase and rehabilitation of non-program multi-family projects which participate in the Energy Star for Homes V3 program, Green Communities, LEED for Homes or NAHB's National Green Building Standard (ICC–700) 2008, receive at least 8 points for energy generation will compliment a weatherlight, well insulated building envelope with highly efficient mechanical systems. Possible renewable energy generation technologies include, but are not limited to: Wind turbines and micro-turbines, micro-hydro power, and photovoltaics (capable of producing a voltage when exposed to radiant energy, especially light), solar hot water systems and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily. Points under this section will be awarded as follows. Projects with preliminary or rehabilitation building plans and energy analysis propose a 10 percent to 100 percent energy generation commitment

(where generation is considered by the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) may be awarded points corresponding to their percent of commitment as follows:

(a) 0 to 9 percent commitment to energy generation receives 0 points;

(b) 10 to 29 percent commitment to energy generation receives 1 point;

(c) 30 to 49 percent commitment to energy generation receives 2 points;

(d) 50 to 69 percent commitment to energy generation receives 3 points;

(e) 70 to 89 percent commitment to energy generation receives 4 points;

(f) 90 percent or more commitment to energy generation receives 5 points. In order to receive more than 1 point for this energy generation section, an accurate energy analysis prepared by an engineer will need to be submitted with the pre-application. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of the building, the portion of building consumption which will be satisfied through on-site generation, and the builder's Home Energy Rating System (HERS) score.

4. *Property Management Credentials (5 points).* Projects may be awarded an additional 5 points if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable housing Management Association, the Institute for Real Estate Management, U.S. Green Building Council's Leadership in Energy and Environmental Design for Operations and Maintenance (LEED OM), or another source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

The National Office will rank all pre-applications nationwide and distribute funds to States in rank order, within funding and RA limits. A lottery in accordance with 7 CFR 3560.56(c) (2) will be used for applications with tied point scores when the all cannot be funded. If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted. Rural Development will notify all applicants whether their applications have been selected or rejected and provide appeal rights under 7 CFR part 11, as appropriate.

VII. Award Administration Information

A. Award Notices

Loan applicants must submit their initial applications by the due date specified in this Notice. Once the applications have been scored and ranked by the National Office the National Office will advise States Offices of the proposals selected for further processing, State Offices will respond to applicants by letter.

If the application is not accepted for further processing, the applicant will be notified of appeal rights under 7 CFR part 11.

B. Administrative and National Policy

All Farm Labor Housing loans and grants are subject to the restrictive-use provisions contained in 7 CFR part 3560.72(a) (2).

C. Reporting

Borrowers must maintain separate financial records for the operation and maintenance of the project and for tenant services. Tenant services will not be funded by Rural Development. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of tenant services, nor may tenant service funds be used to supplement the project operation and maintenance. Detailed financial reports regarding tenant services will not be required unless specifically requested by Rural Development, and then only to the extent necessary for Rural Development and the borrower to discuss the affordability (and competitiveness) of the service provided to the tenant. The project audit, or verification of accounts on Form RD 3560–10, ''Borrower Balance Sheet,'' together with an accompanying Form RD 3560–7, ''Multiple Family Housing Project Budget Utility Allowance,'' showing actual, must allocate revenue and expense between project operations and the service component.

IX. USDA Rural Development MFH State Office Contacts

(**Note:** Telephone numbers listed are not toll-free.)

Alabama State Office
Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, Anne Chavers.

Alaska State Office
800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7723, Cindy Jackson.

Arizona State Office
Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8764, Ernie Wetherbee.

Arkansas State Office
700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3254, Jackie Young.

California State Office,
430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5821, Debra Moretton.

Colorado State Office
USDA Rural Development, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2923, Mary Summerfield.

Connecticut
Served by Massachusetts State Office

Delaware and Maryland State Office
1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, Debra Eason.

Florida & Virgin Islands State Office
4440 NW. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, Tresca Clemmons.

Georgia State Office
Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, Jack Stanek.

Hawaii State Office
(Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, Nate Reidel.

Idaho State Office
Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5628, Joyce Weinzetl.

Illinois State Office
2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, Barry L. Ramsey.

Indiana State Office
5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 425), Douglas Wright.

Iowa State Office
210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4493, Shannon Chase.

Kansas State Office
1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, Mike Resnik.

Kentucky State Office
771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, Paul Higgins.

Louisiana State Office
3727 Government Street, Alexandria,

LA 71302, (318) 473–7962, Yvonne R. Emerson.
Maine State Office
967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9110, Bob Nadeau.
Maryland
Served by Delaware State Office
Massachusetts, Connecticut, & Rhode Island State Office
451 West Street, Amherst, MA 01002, (413) 253–4310, Richard Lavoie.
Michigan State Office
3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, Julie Putnam.
Minnesota State Office
375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7820, Linda Swanson.
Mississippi State Office
Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, Darnella Smith-Murray.
Missouri State Office
601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0987, Rachelle Long.
Montana State Office
2229 Boot Hill Court, Bozeman, MT 59715, (406) 585–2515, Deborah Chorlton.
Nebraska State Office
Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5734, Linda Anders.
Nevada State Office
1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222 (ext. 105), William Brewer.
New Hampshire State Office
Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6050, Heidi Setien.
New Jersey State Office
5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7732, Neil Hayes.
New Mexico State Office
6200 Jefferson St. NE., Room 255, Albuquerque, NM 87109, (505) 761–4945, Yvette Wilson.
New York State Office
The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6421, Michael Bosak.
North Carolina State Office
4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2055, Beverly Casey.
North Dakota State Office
Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2049, Kathy Lake.
Ohio State Office
Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2409, Cathy Simmons.
Oklahoma State Office
100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, Laurie Ledford.
Oregon State Office
1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3353, Rod Hansen.
Pennsylvania State Office
One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, Martha Hanson.
Puerto Rico State Office
654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), Lourdes Colon.
Rhode Island
Served by Massachusetts State Office
South Carolina State Office
Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5122, Tim Chandler.
South Dakota State Office
Federal Building, Room 210, 200 Fourth Street SW., Huron, SD 57350, (605) 352–1136, Linda Weber.
Tennessee State Office
Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1380, Kathy Connelly.
Texas State Office
Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9711, John Kirchhoff.
Utah State Office
Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, Janice Kocher.
Vermont State Office
City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6015, Robert McDonald.
Virgin Islands
Served by Florida State Office
Virginia State Office
Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, CJ Michels.
Washington State Office
1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7706, Bill Kirkwood.
Western Pacific Territories
Served by Hawaii State Office
West Virginia State Office
Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 372–3441 ext 105, Penny Thaxton.
Wisconsin State Office
4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7620 ext 157, Debbie Biga.
Wyoming State Office
P.O. Box 11005, Casper, WY 82602, (307) 233–6716, Timothy Brooks.

Dated: July 12, 2012.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2012–17462 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2012

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service of Rural Development previously announced in a Notice published August 22, 2011 (76 FR 52305) the availability of funds and the timeframe to submit applications for loans to private non-profit organizations, and State and local housing finance agencies, to carry out a demonstration program to provide revolving loans for the preservation and revitalization of low-income Multi-Family Housing (MFH). Rural Development did not receive sufficient applications to use all the available funds. As a result, Rural Development is soliciting additional applications under this Notice for the remaining funding. Housing that is assisted by this demonstration program must be financed by Rural Development through its MFH loan program under Sections 515, 514, and 516 of the Housing Act of 1949. The goals of this demonstration program will be achieved through loans made to intermediaries. The intermediaries will establish their programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of low-income Section 515, 514, and 516 MFH as affordable housing.

DATES: The deadline for receipt of all applications in response to this Notice is 5 p.m., Eastern Time, August 17, 2012. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does

not constitute delivery. Facsimile, electronic transmissions, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sherry Engel, Finance and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Housing Service, 4949 Kirschling Court, Stevens Point, Wisconsin 54481 or by telephone at (715) 345–7677 or via email at: *sherry.engel@wdc.usda.gov* or Tiffany Tietz, Finance and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Housing Service, 3260 Eagle Park Drive, Suite 107, Grand Rapids, Michigan 49525 or by telephone at (616) 942–4111, Extension 126, TDD (302) 857–3585 or via email at *tiffany.tietz@wdc.usda.gov.* (Please note the phone numbers are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 (2005) et seq., the Office of Management and Budget (OMB) must approve all ''collections of information'' by Rural Development. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' (44 U.S.C. 3502(3)(A)). Because this Notice will receive less than ten respondents, the Paperwork Reduction Act does not apply.

Overview Information

Federal Agency Name: Rural Housing Service, USDA.

Funding Opportunity Title: Notice of Funding Availability: Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2012.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.415.

DATES: The deadline for receipt of all applications in response to this Notice is 5 p.m., Eastern Time, August 17, 2012. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, electronic transmissions and postage due applications will not be accepted.

Overview

Past fiscal years' appropriations acts provided funding for, and authorized Rural Development to conduct a revolving loan fund demonstration program for the preservation and revitalization of the Sections 515, 514, and 516 MFH portfolio. The money provided under the previous appropriations acts was authorized to be used until expended. Sections 514, 515 and 516 of the Housing Act of 1949 as amended, provide Rural Development the authority to make loans for low-income Multi-Family Housing, Farm Labor Housing (FLH), and related facilities.

I. Funding Opportunities Description

This Notice requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income MFH properties within the Rural Development Sections 514, 515, and 516 MFH portfolios. Rural Development's regulations for the Section 514, 515, and 516 MFH Program are published at 7 CFR part 3560.

Housing that is constructed or repaired must meet the Rural Development design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, Section 514, 515, and 516 MFH must be managed in accordance with 7 CFR part 3560. Tenant eligibility is limited to persons who qualify as a very low- or low-income household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than Rural Development, such as U.S. Department of Housing and Urban Development Section 8 assistance or Low Income Housing Tax Credits assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR parts 3560.152, 3560.577, and 3560.624.

II. Award Information

Past appropriations acts made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low-income MFH project. The total amount of funding available for this program is $7,898,875. This funding consists of carryover funds from previous fiscal years. Loans to intermediaries under this demonstration program shall have an interest rate of no more than 1 percent and the Secretary of Agriculture may defer the interest and principal payment to Rural Development for up to 3 years during the first 3 years of the loan. The term of such loans shall not exceed 30 years. Funding priority will be given to entities with equal or greater matching funds from third parties, including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of MFH.

Funding Restrictions

No loan made to a single intermediary applicant under this demonstration program may exceed $2,125,000 and any such loan may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas. All Preservation Revolving Loan Fund (PRLF) obligations will have an obligation expiration period of 2 years from the date of obligation.

Prior Fiscal Years PRLF loans that were obligated and not closed within the above 2-year obligation period must be de-obligated to allow more immediate program use unless a 6-month extension is granted by the National Office. The request for an extension will be sent to the National Office by the relevant State Office.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

III. Eligibility Information

(1) Eligibility Requirements—*Intermediary*

(a) The types of entities which may become intermediaries are private non-profit organizations, which may include faith and community based organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security, and repaying the proposed loan.

(ii) A proven record of successfully assisting low-income MFH projects. Such record will include recent experience in loan making and loan servicing that is similar in nature to the loans proposed for the PRLF demonstration program. The applicant must provide documentation of a

delinquency and loss rate note which does not exceed 4 percent. The applicant will be responsible for providing such information to Rural Development.

(iii) A staff with loan making and servicing experience.

(iv) A plan showing Rural Development, that the ultimate recipients will only use the funds to preserve low-income MFH projects.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan evidenced by the fiscal and managerial capabilities of the proposed intermediary.

(ii) The amount of the loan, together with other funds available, is adequate to complete the preservation or revitalization of the project.

(iii) The intermediary's prior calendar year audit is an unqualified audited opinion signed by an independent Certified Public Accountant (CPA) acceptable to the Agency and performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The unqualified audited opinion must provide a statement relating to the accuracy of the financial statements.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' In addition, intermediaries and their principals must not be delinquent on Federal debt or be Federal judgment debtors.

(e) The intermediary and its principal officers (including immediate family) must have no legal or financial interest in the ultimate recipient.

(f) The intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.25 for the fiscal year immediately prior to the year of application. The DSCR is the financial ratio the loan committee will use to determine an applicant's capacity to borrow and service additional debt. The loan committee will use the intermediary's Earnings Before Interest and Taxes (EBIT) to determine DSCR. EBIT is determined by adding net income or net loss to depreciation and interest expense. The loan committee will compare the principal and interest payment multiplied by the DSCR to the EBIT derived from the applicant's consolidated income statement. For example, if an applicant requests a loan amount of $2,000,000 at a 1 percent interest rate amortized over 30 years, the principal and interest payments will be $77,193 annually. Therefore, an applicant who requests $2,000,000 needs an EBIT of at least $96,491 ($77,193 × 1.25). Only debt service from unrestricted revolving loans will be considered in the above calculation. An unrestricted loan is an account in which the accumulated revenues are not dictated by a donor or sponsor.

(g) Intermediaries that have received one or more PRLF loans may apply for and be considered for subsequent PRLF loans provided all the following are met:

(i) For prior PRLF loans at least 50 percent of an intermediary's PRLF loans must have been disbursed to eligible ultimate recipients;

(ii) Intermediaries requesting subsequent loans must meet the requirements of section III(1), Applicant Eligibility, of this Notice;

(iii) The delinquency rate of the outstanding loans of the intermediary's PRLF revolving fund does not exceed 4 percent at the time of application for the subsequent loan;

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with Rural Development;

(v) Subsequent loans will not exceed $1 million each and not more than one loan will be approved by Rural Development for an intermediary in any single fiscal year unless the request is authorized by a PRLF appropriation; and

(vi) Total outstanding PRLF indebtedness of an intermediary to Rural Development will not exceed $15 million at any time.

Only eligible applicants will be scored and ranked. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the Notice for further information on funding priorities.

(2) Eligibility Requirements—*Ultimate Recipients*

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

(i) Currently have a Rural Development Sections 515, 514 loan, or 516 grant for the property to be assisted by the PRLF demonstration program.

(ii) Certify that the principal officers (including their immediate family) of the ultimate recipient, hold no legal or financial interest in the intermediary.

(iii) Be in compliance with all Rural Development program requirements or have an Agency approved work plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government including a non-tax judgment lien (other than a judgment in the U.S. tax courts), by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the PRLF. PRLF may not be used to satisfy the delinquency.

(c) The ultimate recipient cannot be currently debarred or suspended from Federal Government programs.

(d) There is a continuous need for the property in the community as affordable housing.

IV. Administrative Requirements

(1) The following applies to loans to intermediaries made in response to this Notice:

(a) PRLF intermediaries will be required to provide Rural Development with the following reports:

(i) An annual audit;

(A) The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. The audit period will be set by the intermediary. The intermediary will notify Rural Development of the date. Audits must cover all of the intermediary's activities. Audits will be performed by an independent CPA. An acceptable audit will be performed in accordance with GAGAS and include such tests of the accounting records as the auditor considers necessary in order to express an unqualified audited opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by OMB Circular A–133 should submit audits made in accordance with that circular.

(ii) Quarterly or semiannual performance reports (due to Rural Development 30 days after the end of the fiscal quarter or half);

(A) Performance reports will be required quarterly during the first year after loan closing. Thereafter, performance reports will be required semiannually. Also, Rural Development may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or Rural Development determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These performance reports shall contain information only on the PRLF,

or if other funds are included, the PRLF portion shall be segregated from the others; and in the case where the intermediary has more than one PRLF from Rural Development, a separate report shall be made for each PRLF.

(C) The performance report will include OMB Standard Form 425, Federal Financial Report. This report will provide information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and other reports as Rural Development may require from time to time regarding the conditions of the loan.

(b) Security will consist of a pledge by the intermediary of all assets now or hereafter placed in the PRLF, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, Rural Development will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant in the loan agreement that, in the event the intermediary's financial condition deteriorates, the intermediary takes action detrimental to prudent fund operation, or the intermediary fails to take action required of a prudent lender, it will provide additional security, execute any additional documents, and undertake any reasonable acts Rural Development may request to protect Rural Development's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to Rural Development. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients may be assignable.

(c) RHS may consider, on a case by case basis, subordinating its security interest on the ultimate recipient's property to the lien of the intermediary so that Rural Development has a junior lien interest when an independent appraisal verifies the Rural Development subordinated lien will continue to be fully secured.

(d) The term of the loan to an ultimate recipient may not exceed the less of 30 years or the remaining term of the Rural Development loan.

(e) When loans are made to ultimate recipients restrictive-use provisions must be incorporated, as outlined in 7 CFR part 3560.662.

(f) 7 CFR part 1901, subpart F regarding historical and archaeological properties apply to all loans funded under this Notice.

(g) 7 CFR part 1940, subpart G regarding environmental assessments apply to all loans to ultimate recipients funded under this Notice. Loans to intermediaries under this program will be considered a categorical exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, ''*Environmental Checklist for Categorical Exclusions,*'' by Rural Development.

(h) An Intergovernmental Review, will be conducted in accordance with the procedures contained in 7 CFR part 3015, subpart V, if the applicant is a cooperative.

(2) The intermediary agrees to the following:

(a) To obtain written Rural Development approval, before the first lending of PRLF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) The intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from Rural Development before making any significant changes in forms, security policy, or the intermediary's work plan. Rural Development may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by Rural Development that the change will not jeopardize repayment of the loan or violate any requirement of this Notice or other Rural Development regulations. The intermediary must comply with the work plan approved by Rural Development so long as any portion of the intermediary's PRLF loan is outstanding;

(c) To allow Rural Development to take a security interest in the PRLF, the intermediary's portfolio of investments derived from the proceeds of the loan award, and other rights and interests as Rural Development may require;

(d) To return, as an extra payment on the loan, any funds that have not been used in accordance with the intermediary's work plan by a date 2 years from the date of the loan agreement, unless an extension has been granted. The intermediary acknowledges that Rural Development may cancel the approval of any funds not yet delivered to the intermediary if funds have not been used in accordance with the intermediary's work plan within the 2-year period. Rural Development, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by no more than 3 additional years. If any loan funds have not been used by 5 years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and, in addition, the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Rural Development approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(e) The intermediary will be required to enter into a Rural Development approved loan agreement and promissory note. The intermediary will receive a 30-year loan at a 1 percent interest rate. The loan will be deferred for up to three years if requested in the intermediary's work plan.

(f) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing by preserving and regulating existing properties financed with Sections 514, 515, and 516 funds. They must also be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

(g) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Rural Development concurrence is required prior to final approval of the loan. The intermediary must submit a request for Rural Development concurrence of a proposed loan to an ultimate recipient. Such request must include:

(i) Certification by the intermediary that:

(A) The proposed ultimate recipient is eligible for the loan;

(B) The proposed loan is for eligible purposes;

(C) The proposed loan complies with all applicable statutes and regulations; and

(D) Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest in the intermediary.

(ii) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow Rural Development to determine the:

(A) Name and address of the ultimate recipient;

(B) Loan purposes;
(C) Interest rate and term;
(D) Location, nature, and scope of the project being financed;
(E) Other funding included in the project;
(F) Nature and lien priority of the collateral; and
(G) Environmental impacts of this action. This will include an original Form RD 1940–20, ''*Request for Environmental Information,*'' completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed Federal Emergency Management Agency (FEMA) Form 81–93, ''Standard Flood Hazard Determination.'' If the age of the building is over 50 years or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact Rural Development to begin Section 106 of the National Historic Preservation Act of 1966 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact Rural Development to analyze any effects as outlined in 7 CFR part 1940, subpart G, Exhibit C. The intermediary will assist Rural Development in any additional requirements necessary to complete the environmental review.
(iii) Such other information as Rural Development may request on specific cases.
(h) Upon receipt of a request for concurrence in a loan to an ultimate recipient Rural Development will:
(i) Review the material submitted by the intermediary for consistency with Rural Development's preservation and revitalization principles which include the following;
(A) There is a continuing need for the property in the community as affordable housing. If Rural Development determines there is no continuing need for the property the ultimate recipient is ineligible for the loan;
(B) When the transaction is complete, the property will be owned and controlled by eligible Section 514, 515, or 516 borrowers;
(C) The transaction will address the physical needs of the property;
(D) Existing tenants will not be displaced because of increased post transaction rents;
(E) Post transaction basic rents will not exceed comparable market rents; and
(F) Any equity loan amount will be supported by a market value appraisal.
(ii) The intermediary shall pledge as collateral for non-Rural Development funds its PRLF, including its portfolio of investments derived from the proceeds of other funds and this loan award.
(iii) Issue a letter concurring with the loan when all requirements have been met or notify the intermediary in writing the reasons for denial when Rural Development determines it is unable to concur with the loan.

V. Application and Submission Information

Submission Address

Applications should be submitted to USDA Rural Housing Service; Attention: Norma Gavin, Administrative Assistant; Multi-Family Housing STOP 0782 (Room 1263–S); 1400 Independence Avenue SW., Washington, DC 20250–0782.

The application process is a two-step process: First, all applicants will submit proposals to the National Office for loan committee review. The initial loan committee will determine if the borrower is eligible, score the application, and rank the applicants according to the criteria established in this Notice. Only eligible borrowers will be scored. The loan committee will select proposals for further processing. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded applicant may be selected. Second, after the loan is obligated to the intermediary but prior to loan closing, the State Office in the applicant's area of residence or State where the applicant will be doing its intermediary work will provide written approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. Additionally, the State Office will provide written approval of the applicant's binding policy with regard to the amount and form of security to be required.

Once the loan closes, the applicant will be required to comply with the terms of its work plan which describes how the money will be used, the loan agreement, the promissory note and any other loan closing documents. At the time of loan closing, Rural Development and loan recipient shall enter into a loan agreement and a promissory note acceptable to Rural Development. Loans obligated by State Offices to intermediaries must close on or before the second anniversary of the dated pre-approval letter mentioned above. Applicants who have not closed by this date must de-obligate PRLF funds to allow further program use of funds.

Application Requirements

The application must contain the following:
(1) A summary page, that is double-spaced and not in narrative form, that lists the following items:
(a) Applicant's name.
(b) Applicant's Taxpayer Identification Number.
(c) Applicant's address.
(d) Applicant's telephone number.
(e) Name of applicant's contact person, telephone number, and address.
(f) Amount of loan requested.
(2) Form RD 4274–1, ''*Application for Loan (Intermediary Relending Program).*'' This form can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD4274-1.PDF.*
(3) A written work plan and other evidence Rural Development requires that demonstrates the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum, include all of the following:
(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this Notice. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Rural Development review, and the terms of the contract and its duration must be sufficient to adequately service Rural Development loan through to its ultimate conclusion. If Rural Development determines the personnel lack the necessary expertise to administer the program, the loan request will be denied.
(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Rural Development funds for administration of the intermediary's operations and financial assistance for projects.
(c) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request, or include well developed targeting criteria

for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Rural Development funding of the loan request.

(d) Include a list of proposed fees and other charges it will assess to the ultimate recipients.

(e) Provide documentation to Rural Development that the intermediary has secured commitments of significant financial support from public agencies and private organizations or have received tax credits for the calendar year prior to this Notice.

(f) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide Rural Development with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will flow from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must at least be addressed by the intermediary's relending plan.

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) If the intermediary provides technical assistance, (providing technical assistance to ultimate recipients is not required as part of this program), the intermediary will provide specific information as to how and what type of technical assistance the intermediary will provide to the ultimate recipients and potential ultimate recipients. For instance, describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the PRLF must extend to include a year with a full annual installment on the PRLF loan.

(5) A written agreement of the intermediary to Rural Development agreeing to the audit requirements.

(6) Form RD 400–4, ''*Assurance Agreement,*'' a copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.*

(7) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(8) Most recent unqualified audit report signed by a CPA and prepared in accordance with GAGAS.

(9) Form RD 1910–11, ''*Applicant Certification Federal Collection Policies for Consumer or Commercial Debts,*'' a copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF.*

(10) Form AD–1047, ''*Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions,*'' a copy of which can be obtained at: *http://www.ocio.usda.gov/forms/doc/AD1047-F-01-92.PDF.*

(11) Exhibit A–1 of RD Instruction 1940–Q, ''*Certification for Contracts, Grants, and Loans,*'' a copy of which can be obtained at: *http://www.rurdev.usda.gov/me/CBP/const/1940qa1.pdf.*

(12) Copies of the applicant's tax returns for each of the 3 years prior to the year of application, and most recent audited financial statements.

(13) A separate one-page information sheet listing each of the ''Selection Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

(14) Financial statements (consolidated or unconsolidated) for the year prior to this Notice.

(15) A borrower authorization statement allowing Rural Development the authorization to verify past and present earnings with the preparer of the intermediary's financial statements.

VI. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Rural Housing Service Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this Notice and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the loan application closing date set forth in this Notice.

Selection Criteria

Selection criteria points will be allowed only for factors evidenced by well documented, reasonable work plans which provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's application must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not cover one of the categories listed, it will not receive points for those criteria.

(1) *Other funds.* Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(a) The intermediary will obtain non-Rural Development loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. Points for the amount of funds from other sources are as follows:

(i) At least 10 percent but less than 25 percent of the total development cost (as defined in 7 CFR part 3560.11)—5 points;

(ii) At least 25 percent but less than 50 percent of the total development cost—10 points; or

(iii) 50 percent or more of the total development cost—15 points.

(b) The intermediary will provide loans to each ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average per project:

(i) At least 10 percent but less than 25 percent of the total development cost—5 points;

(ii) At least 25 percent but less than 50 percent of total development cost—10 points; or

(iii) 50 percent or more of total development cost—15 points.

(2) *Intermediary contribution.* The intermediary will contribute its own funds not derived from Rural Development. The non-Rural Development contributed funds will be placed in a separate account from the PRLF account. The intermediary shall contribute funds not derived from Rural Development into a separate bank account or accounts according to their ''work plan.'' These funds are to be placed into an interest bearing counter-signature-account for 3 years as set forth in the loan agreement. The counter-signature-account will require a signature from a Rural Development employee and intermediary. After 3 years, these funds shall be commingled with the PRLF to provide loans to the ultimate recipient for the preservation and revitalization of Section 514, 515, or 516 Multi-Family Housing.

The amount of non-Agency derived funds contributed to the PRLF will equal the following percentage of Rural Development PRLF:

(a) At least 5 percent but less than 15 percent—5 points;

(b) At least 15 percent but less than 25 percent—30 points; or

(c) 5 percent or more—50 points.

(3) *Experience.* The intermediary has actual experience in the administration of revolving loan funds and the preservation of MFH, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of MFH in order to qualify for points under the selection criteria. If the number of years of experience differs between the two types of above listed experience, the type of experience with the lesser number of years will be used for the selection criteria.

(a) At least 1 but less than 3 years—5 points;

(b) At least 3 but less than 5 years—10 points;

(c) At least 5 but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) *Debt/Equity Ratio.* The Debt/Equity Ratio (DER) is the financial ratio used to determine how much debt an applicant has relative to its equity. DER is calculated from the balance sheet by adding the short term or current debt plus the long term debt, and then dividing that number by the intermediary's equity. In order to receive points, the intermediary must submit a summary of how the DER was calculated.

(5) *Administrative.* The Administrator may assign up to 25 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that will be considered are the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; economic development plan from the local community, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community (EZ/EC) designation; or excellent utilization of an existing revolving loan fund program. The Administrator will document the reasons for the particular point allocation.

VII. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, neither the intermediary nor Rural Development will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, familial status, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Rural Development loan funds are involved.

(2) 7 CFR part 1901, subpart E applies to this program.

(3) The Rural Housing Service (RHS) Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR part 3560.60(d).

(5) To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender. The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: July 11, 2012.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2012–17527 Filed 7–17–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 120705216–2216–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Supplement to the Fiscal Year 2013 Annual Materials Plan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The purpose of this notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed supplement to the Fiscal Year 2013 Annual Materials Plan related to two

material research and development projects and the proposed revisions to the Annual Materials Plan for four materials currently in the National Defense Stockpile. The research and development projects involve two materials—cadmium zinc tellurium (CZT) substrates and triamino trinitrobenzene (TATB). The revisions pertain to four materials—germanium; manganese, metallurgical grade; platinum—iridium; and zinc. The role of the Market Impact Committee is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals involving the stockpile and related material research and development projects. Public comments are an important element of the Committee's market impact review process.

DATES: To be considered, written comments must be received by August 17, 2012.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), email: *MIC@bis.doc.gov*; and Douglas Kramer, U.S. Department of State, Bureau of Energy Resources, Office of Europe, Middle East, and Africa, 2201 C Street NW., Washington, DC 20520, fax: (202) 647–4037 (Attn: Douglas Kramer), or email: *KramerDR@state.gov.*

FOR FURTHER INFORMATION CONTACT: Brett Heidenreich, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–7417.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979, as amended (the Stock Piling Act) (50 U.S.C. 98, *et seq.*), the Department of Defense, as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 9(b)(2)(G)(ii) of the Stock Piling Act (50 U.S.C. 98(h)(b)(2)(G)(ii)) authorizes the National Defense Stockpile Manager to fund material research and development projects to develop new materials for the stockpile.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–I) formally established a Market Impact Committee (the ''Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials stored in or of interest to the National Defense Stockpile Manager.

In Attachment 1, the Defense Logistics Agency (DLA) lists the quantities of materials associated with the two material research and development projects to supplement its FY 2013 Annual Materials Plan. The two material research and development projects relate to DLA establishing vendor-owned buffer inventories in the United States for cadmium zinc tellurium (CZT) substrates and triamino trinitrobenzene (TATB) up to the levels enumerated in Attachment 1. In these material research and development projects, DLA would enter into arrangements with vendors to maintain inventories of the two materials with options that DLA could purchase material if needed.

DLA is required to supplement its FY 2013 Annual Materials Plan to account for the two material research and development projects because DLA will be using the Defense National Stockpile Transaction Fund to pay for the two material research and development projects. The quantities listed in Attachment 1 are not acquisition target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be associated with the two material research and development projects in FY 2013. DLA is not proposing to acquire these materials and add them to the National Defense Stockpile. The quantity of each material that will actually be associated with the two material research and development projects will depend on the market for the materials during the fiscal year as well as on the quantity of each material approved for these material research and development projects by Congress.

In Attachment 2, DLA lists proposed revisions to the quantities in the approved FY 2013 Annual Materials Plan for four materials. The quantities listed in Attachment 2 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DLA as noted. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee is seeking public comments on the potential market impact associated with the two material research and development projects and the proposed revisions to the FY 2013 AMP for four materials as enumerated in Attachments 1 and 2. Public comments are an important element of the Committee's market impact review process.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the quantities associated with the two material research and development projects and the four proposed revisions to the FY 2013 AMP. All comments must be submitted to the address indicated in this notice. All comments submitted through email must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on August 17, 2012. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S.

Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: July 12, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

Attachment 1

PROPOSED SUPPLEMENT TO FISCAL YEAR 2013 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Cadmium Zinc Tellurium (CZT) substrates	cm^2	40,000	1
Triamino Trinitrobenzene (TATB)	LB	24,000	1

[1] Vendor-owned buffer inventory material research and development project.

Attachment 2

PROPOSED REVISIONS TO FISCAL YEAR 2013 ANNUAL MATERIALS PLAN

Material	Unit	Proposed revised quantity	Approved quantity	Footnote
Germanium	kg	3,000	0	1
Manganese Metallurgical Grade	SDT	100,000	222,025	2
Platinum—Iridium	Tr Oz	568	0	1
Zinc	ST	7,992	0	2, 3

[1] Upgrade project.
[2] Disposal.
[3] Actual quantity will be limited to remaining inventory.

[FR Doc. 2012–17460 Filed 7–17–12; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on solid urea from the Russian Federation. The review covers one producer/exporter of the subject merchandise, MCC EuroChem (EuroChem). The period of review (POR) is July 1, 2010, through June 30, 2011. We have preliminarily found that sales of the subject merchandise have not been made at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days after the date of publication of this notice.

DATES: Effective July 18, 2012.

FOR FURTHER INFORMATION CONTACT: Dustin Ross or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0747 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Ad Hoc Committee of Domestic Nitrogen Producers and its individual urea-producing members, CF Industries, Inc., and PCS Nitrogen Fertilizer, L.P. (collectively, the petitioners) and EuroChem requested an administrative review of the antidumping duty order on solid urea from Russia with respect to EuroChem on August 1, 2011.[1] On August 26, 2011, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on solid urea from the Russian Federation.[2] On March 26, 2012, we extended the deadline for the preliminary results by 75 days, to June 15, 2012.[3] On June 1, 2012, we extended the deadline for the preliminary results by an additional 26 days, to July 11, 2012.[4] We are conducting the administrative review of the order in accordance with section 751(a) of the Act.

Scope of the Order

The merchandise subject to the order is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item number 3102.10.00.00. Such merchandise was classified previously under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

[1] *See* the petitioners' letter to the Department, dated August 1, 2011, at 1, and EuroChem's letter to the Department, dated August 1, 2011, at 1, respectively.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011).

[3] *See Solid Urea From the Russian Federation: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 17410 (March 26, 2012).

[4] *See* Memorandum to Gary Taverman, ''Solid Urea from the Russian Federation: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.''

Fair-Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether EuroChem's sales of solid urea from Russia were made in the United States at less than normal value, we compared the constructed export price (CEP) to the normal value as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.[5] In particular, the Department compared monthly, weighted-average CEPs with monthly, weighted-average normal values, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Order'' section of this notice, above, that were in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If contemporaneous sales of identical home-market merchandise, as described below, were reported, then we made comparisons to the monthly weighted-average home-market prices that were based on all such sales. If there were no contemporaneous sales of an identical merchandise, then we identified sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e).

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by EuroChem and sold in the U.S. and home markets on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are form, grade, nitrogen content, size, urea-formaldehyde content, other additive/conditioning agent, coating agent, and biuret content.

Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, the Department will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. For all U.S. sales, EuroChem reported contract date as the date of sale. EuroChem defines contract date, which coincides with shipment date for all U.S. sales during the period of review, as the date on which the material terms of sale are established and no longer subject to change. EuroChem provided sample contracts for U.S. sales covered by this review, which support EuroChem's contention that price and quantity are subject to change and not finalized until the date of contract.[6] Based on record evidence, and consistent with previous administrative reviews, all material terms of sale are established on the date of contract.[7] Therefore, we have used contract date as reported by EuroChem as the date of sale for all U.S. sales.

With respect to its home-market sales, EuroChem reported invoice date as the date of sale, explaining that price and quantity are not finalized and are subject to change until invoicing because at the date of invoice, the product is loaded for delivery, weighed, and the exact quantity is recorded for the invoice and transportation documents.[8] This is consistent with our regulatory presumption for invoice date as the date of sale.[9] Thus, because the evidence does not demonstrate that the material terms of sale were established on another date, and consistent with previous reviews, we have used invoice date as the date of sale in the home market.[10]

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for EuroChem because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and export price was not otherwise indicated.

We calculated CEP based on the free-on-board or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home Market Viability as Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.,* the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of EuroChem's home-market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act.[11] Based on this comparison, we determined that EuroChem had a viable home market during the POR. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade and sales made to affiliated purchasers where we find prices were made at arm's length, described in detail below.

B. Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales. When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. For CEP, the level of trade is that of the constructed sale from the exporter to the affiliated importer. To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

In the home market, EuroChem reported a single channel of distribution. Within this single channel of distribution, EuroChem reported a

[5] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews''*).

[6] *See* VI–57 of EuroChem's October 27, 2011, response to the Department's questionnaire.

[7] *See Solid Urea from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 76 FR 66690 (October 27, 2011).

[8] *See* VI–41 of EuroChem's October 27, 2011, response to the Department's questionnaire.

[9] *See* 19 CFR 351.401(i).

[10] *See Solid Urea from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 76 FR 66690 (October 27, 2011).

[11] *See* Memorandum titled ''2010–2011 Administrative Review of the Antidumping Duty Order on Solid Urea from the Russian Federation—Preliminary Results Analysis Memorandum for EuroChem,'' (''Preliminary Analysis Memorandum'') dated concurrently with this notice, at 2.

single level of trade for all three customer types (*i.e.,* distributors, traders, and end-users). After analyzing the data on the record with respect to the selling functions performed for each customer type, we find that EuroChem made all home-market sales at a single marketing stage (*i.e.,* one level of trade) in the home market.[12]

In the U.S. market, EuroChem had only CEP sales through its affiliated reseller[13] and, thus, a single level of trade.[14]

We found that there were significant differences between the selling activities associated with the CEP level of trade and those associated with the home-market level of trade. For example, the CEP level of trade involved little or no strategic and economic planning, personnel training, distributor/dealer training, procurement/sourcing service, packing, order input/processing and freight/delivery services.[15] Therefore, we have concluded that CEP sales constitute a different level of trade from the level of trade in the home market and that the home-market level of trade is at a more advanced stage of distribution than the CEP level of trade.

We were unable to match CEP sales at the same level of trade in the home market or to make a level-of-trade adjustment because the differences in price between the CEP level of trade and the home-market level of trade cannot be quantified due to the lack of an equivalent CEP level of trade in the home market. Also, there are no other data on the record which would allow us to make a level-of-trade adjustment. Because the data available does not provide an appropriate basis on which to determine a level-of-trade adjustment and the home-market level of trade is at a more advanced stage of distribution than the CEP, we made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). The CEP offset was the sum of indirect selling expenses incurred on home-market sales up to the amount of indirect selling expenses incurred on the U.S. sales. *See* Preliminary Analysis Memorandum at 2.

C. Calculation of Normal Value Based on Comparison Market Prices

We based normal value on the starting prices to home-market customers. Pursuant to section 773(a)(6)(B)(ii) of the Act, we deducted inland-freight expenses EuroChem incurred on its home-market sales. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We made deductions for direct selling expenses, as appropriate. *See* Preliminary Analysis Memorandum at 5 through 6.

Affiliation

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.,* sales were made at arm's-length prices.[16] We excluded from our analysis home-market sales to an affiliated customer for consumption in the home market where we determined that the sales to that affiliated customer were not made at arm's-length prices. To test whether the sales to an affiliated customer were made at arm's-length prices, we compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, we determined that the sales to that affiliated customer were at arm's-length prices.[17] We exclude from our analysis all sales to an affiliated customer for consumption in the home market where we determined that these sales, on average, were not sold at arm's-length prices. *See* Preliminary Analysis Memorandum at 4.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 0.00 percent exists for EuroChem for the period July 1, 2010, through June 30, 2011.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[18] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than the later of 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[19] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[20] Case and rebuttal briefs should be filed using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[21]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[22] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. EuroChem reported the name of the importer of record and the entered value for all of its sales to the United States during the POR. If EuroChem's weighted-average dumping margin is

[12] *See* VI–36 through VI–46 of EuroChem's October 27, 2011, response to the Department's questionnaire.

[13] *See* IV–13 of EuroChem's November 8, 2011, response to the Department's questionnaire.

[14] *See* section 772(b) of the Act.

[15] See VI–44 to VI–45 of EuroChem's October 27, 2011, response to the Department's questionnaire.

[16] *See* 19 CFR 351.403(c).

[17] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002).

[18] *See* 19 CFR 351.224(b).

[19] *See* 19 CFR 351.309(d).

[20] *See* 19 CFR 351.309(c)(2) and (d)(2).

[21] *See* 19 CFR 351.303.

[22] *See* 19 CFR 351.310(c).

above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by EuroChem for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of solid urea from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for EuroChem will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 64.93 percent, the all-others rate established in *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value,* 52 FR 19557 (May 26, 1987). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 11, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–17518 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), ThinkGeek, Inc. (ThinkGeek) filed a request for a changed circumstances review of the antidumping duty (AD) order on certain cased pencils (pencils) from the People's Republic of China (PRC) to revoke the AD order with respect to novelty drumstick pencils. The domestic industry has affirmatively expressed a lack of interest in continuing the AD order with respect to this product. In response to ThinkGeek's request, the Department of Commerce (the Department) is initiating a changed circumstances review to be conducted on an expedited basis and issuing a notice of preliminary intent to revoke, in part, this order. Pursuant to ThinkGeek's request, this partial revocation would be applied retroactively to June 1, 2011. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gorman at (202) 482–1174 or Yasmin Nair at (202) 482–3813; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

On December 28, 1994, the Department published in the *Federal Register* the AD order on certain cased pencils from China. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994) (AD order). On May 23, 2012, in accordance with section 751(b) and 751(d)(1) of the Act, 19 CFR 351.216(b), and 19 CFR 351.222(g)(1), ThinkGeek, a U.S. importer of subject merchandise, requested revocation in part, of the AD order with respect to its novelty pencil, which is shaped like a drumstick, as part of a changed circumstances review. ThinkGeek's novelty drumstick pencil is made to look like a pencil, except that it is shaped as a drumstick. This pencil is longer than regular wooden pencils and does not contain an eraser. ThinkGeek requested that the Department conduct the changed circumstances review on an expedited basis pursuant to 19 CFR 351.221(c)(3)(ii).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) *Length:* 13.5 or more inches; (2) *sheath diameter:* not less than one-and-one quarter inches at any

point (before sharpening); and (3) *core length:* not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following characteristics are excluded from the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope and order is dispositive.

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke the Order in Part

At the request of ThinkGeek, and in accordance with sections 751(b)(1) and 751(d)(1) of the Act and 19 CFR 351.216 and 19 CFR 351.222(g)(1), the Department is initiating a changed circumstances review of novelty drumstick pencils from the PRC to determine whether partial revocation of the AD order is warranted with respect to this product. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In its administrative practice, the Department has interpreted ''substantially all'' to mean at least 85 percent of the total production of the domestic like product covered by the order. *See, e.g., Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634, 27635 (May 12, 2011). In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

On May 23, 2012, ThinkGeek submitted a letter from petitioners and domestic pencil producers Sanford, L.P.; Musgrave Pencil Company and General Pencil Company (collectively, Petitioners) expressing a lack of interest in maintaining the AD order with respect to the novelty drumstick pencils identified in ThinkGeek's request. On June 5, 2012, Petitioners submitted a letter stating that they comprise ''substantially all'' of the production of the domestic like product, as provided in section 782(h) of the Act and 19 CFR 351.222(g)(1)(i), in that they account for at least 85 percent of such production. *See* ThinkGeek's letter dated June 5, 2012. Also, ThinkGeek's letter requested that this partial revocation be retroactively applied to ThinkGeek's drumstick pencils, entered or withdrawn from warehouse, for consumption, on or after June 1, 2011, which would apply to any remaining unliquidated entries of this product. *See id.*

In accordance with section 751(b) of the Act, 19 CFR 351.216, 19 CFR 351.222(g), and 19 CFR 351.221(c)(3)(ii), we are initiating this changed circumstances review and have determined that expedited action is warranted. In accordance with 19 CFR 351.222(g)(1), we find that Petitioners' affirmative statements of no interest constitutes good cause for the conduct of this review. Additionally, our decision to expedite this review pursuant to 19 CFR 351.221(c)(3)(ii) stems from the domestic industry's lack of interest in applying the AD order to these drumstick novelty pencils, described above, covered by ThinkGeek's request.

Based on the expression of no interest by Petitioners and absent any objection by other domestic interested parties, we preliminarily determine that substantially all of the domestic producers have no interest in the continued application of the AD order on pencils from the PRC to the merchandise that is subject to ThinkGeek's request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of drumstick novelty pencils, as described above, from the PRC. This partial revocation would be retroactively applied to entries of novelty drumstick pencils, entered or withdrawn from warehouse, for consumption, on or after June 1, 2011, a date after the last day of the most recently completed administrative review. *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009) (retroactively revoking an order, in part, to unliquidated entries not subject to a final determination by the Department). We intend to modify the scope of the AD order to read as follows:

> In addition, pencils with all of the following characteristics are excluded from the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end. Also excluded are novelty drumstick pencils that are shaped like drumsticks, longer than regular wooden pencils, and do not contain erasers.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of these preliminary results. Consistent with 19 CFR 351.309, parties who submit written comments or rebuttal comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 10 days of the date of publication of this notice. Further, any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first business day thereafter. All written comments and/or hearing requests must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[1] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time of the deadlines set forth in this notice.

We will issue our final results of this changed circumstances review as soon as practicable following the above comment period, but not later than 270 days after the date on which we initiated the changed circumstances review or within 45 days if all parties agree to our preliminary results, in accordance with 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review notice is published in

[1] *See generally* 19 CFR 351.303.

accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, 351.221(b)(1) and (4), and 351.222(g).

Dated: July 11, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–17523 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC105

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research and enhancement.

SUMMARY: Notice is hereby given that NMFS has received a scientific research and enhancement permit application request relating to anadromous species listed under the Endangered Species Act (ESA). The proposed research activities are intended to increase knowledge of the species and to help guide management and conservation efforts.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on August 17, 2012.

ADDRESSES: The application and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (916) 930–3706 or fax (916) 930–3629. Written comments on the application should be submitted to the Protected Resources Division, NMFS, 650 Capitol Mall, Room 5–100, Sacramento, CA 95814. Comments may also be submitted via fax to (916) 930–3629 or by email to *FRNpermits.SR@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amanda Cranford, Sacramento, CA (ph.: 916–930–3706, email: *Amanda.Cranford@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened California Central Valley steelhead (*Oncorhynchus mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), and threatened southern distinct population segment of North American (sDPS) green sturgeon (*Acipenser medirostris*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the applications listed in this notice should set out the specific reasons why a hearing on the application(s) would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Application Received

Permit 16543

The Department of Water Resources (DWR) is requesting a 3-year scientific research and enhancement permit to take adult CCV steelhead, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and both adult and juvenile sDPS green sturgeon associated with research activities in the Sacramento-San Joaquin Delta, California. In the studies described below, all take will be incidental and non-lethal. Application 16543 was previously noticed in the **Federal Register** (76 FR 57717) with a 30 day comment period from September 16, 2011 to October 17, 2011. No comments were received for this application, however due to substantial changes to the sampling methods and the amount take NMFS decided to publish the revised notice for public comment.

This project will examine predation by introduced fishes (striped bass, largemouth bass, smallmouth bass) and native resident fishes (Sacramento pikeminnow) on migrating native fishes (juvenile Chinook salmon, juvenile steelhead, delta and longfin smelt, white and green sturgeon, and Sacramento splittail) across a variety of habitats and migration corridors in the northern Sacramento-San Joaquin Delta. Results will provide information on spatial and environmental patterns of predation; critical information for guiding future restoration projects on conditions likely to support or discourage higher predation rates on endangered and native fishes. The sampling will be conducted in April, June and December in the Sacramento River above Rio Vista, Georgiana, Steamboat, Miner, and Cache sloughs, the Sacramento Deep Water Ship Channel, and Liberty Island. Sampling months were selected based on likely periods of co-occurrence of predators and prey species of interest. Predators will be sampled using trammel nets, with the goal of genetically analyzing their gut contents for the DNA of various prey items.

While listed species are not the target of the sampling program, incidental take may occur and will provide valuable information on abundance, habitat use, and migration timing.

Dated: July 13, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–17487 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, August 2, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will discuss possible adjustments to sector management measures and issues related to setting Acceptable Biological Catches (ABCs), Annual Catch Limits (ACLs), and Accountability Measures (AMs). The Committee will continue to develop options to improve sector monitoring, including both at-sea and dockside monitoring. They may discuss different funding mechanisms, appropriate coverage levels, full retention of allocated groundfish species, and ACE carry-over provisions. With respect to ABCs/ACLs/AMs, the Committee will consider additional sub-ACLs for the scallop fishery for stocks such as SNE/MAB windowpane flounder and SNE/MA winter flounder. The Committee may also develop options for additional sub-ACLs for fisheries outside the Council's jurisdiction that catch these stocks. Examples of fisheries that may be affected include the fluke and scup fisheries that are managed by the Mid-Atlantic Fishery Management Council (MAFMC) and the Atlantic States Marine Fisheries Commission (ASMFC), and the squid fisheries are managed by the MAFMC. Committee members will also discuss additional reactive AMs for wolffish, SNE/MA winter flounder, and Atlantic halibut. The Committee may also discuss other issues that may be incorporated into the framework, such as issues related to Georges Bank yellowtail flounder management. Options identified by the Committee will be included in a future management action (Framework Adjustment 48) that will be considered by the Council in the fall of 2012. The Committee is also expected to receive a preliminary report on the recent assessments of Eastern Georges Bank cod and haddock, and Georges Bank yellowtail flounder that were conducted by the Transboundary Resource Assessment Committee. The Committee may provide comments for consideration by the Transboundary Management Guidance Committee when it negotiates FY 2013 quotas for these stocks. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–17430 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting of the South Atlantic Fishery Management Council's Golden Crab Advisory permit holders.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of Golden Crab Permit Holders in Key Largo, FL.

DATES: The meeting will take place August 10, 2012, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hilton Key Largo Resort, 97000 South Overseas Highway, Key Largo, FL 33037; telephone: (305) 852–5553.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Golden Crab permit holders are being brought together to discuss options being considered by the South Atlantic Fishery Management Council that could potentially establish a catch share program in this fishery. Permit holders will be asked to discuss their support for or opposition to a catch share program. There will be an overview of draft Amendment 6 to the Golden Crab Fishery Management Plan for the South Atlantic Region and the permit holderswill discuss potential allocation scenarios and share ownership caps among other management issues for the commercial fishery. The permit holders will discuss alternatives in the amendment and provide recommendations for Council consideration.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) three days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: July 13, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–17436 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA830

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Construction Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, six species of marine mammals during construction activities associated with a wharf construction project in Hood Canal, Washington.

DATES: This authorization is effective from July 16, 2012, through February 15, 2013.

ADDRESSES: A copy of the IHA and related documents are available by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application, including references used in this document, may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* For those members of the public unable to view these documents on the Internet, a copy may be obtained by writing to the address specified above or telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**). A memorandum describing our adoption of the Navy's Environmental Impact Statement (2011) and our associated Record of Decision, prepared pursuant to the National Environmental Policy Act, are also available at the same site. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

We received an application on May 25, 2011 from the Navy for the taking of marine mammals incidental to pile driving in association with a wharf construction project in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). The Navy submitted a revised version of the application on August 11, 2011, and, responsive to discussions with us as well as new information about species in the area, submitted a final version deemed adequate and complete on November 3, 2011. The Navy submitted a final updated addendum to the IHA request on December 16, 2011.The wharf construction project is proposed to occur over multiple years; however, this IHA would cover only the initial year of in-water work associated with the project. Pile driving activities would occur only within an approved in-water work window from July 16, 2012, through February 15, 2013. Six species of marine mammals are known from the waters surrounding NBKB: Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), killer whales (*Orcinus orca;* transient type only), Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*). In addition, a single humpback whale (*Megaptera novaeangliae*) was observed in the Hood Canal during January and February, 2012; please note that these sightings occurred after the notice of proposed authorization for this project was published in the **Federal Register**. Therefore, descriptions of humpback whale occurrence in Puget Sound are included here.

These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion, which is present only from fall to late spring (October to mid-April), and the California sea lion, which is not present during part of summer (late June through July). Although known to be historically abundant in the inland waters of Washington, no other confirmed documentation of humpback whales in Hood Canal is available. Additionally, while the Southern Resident killer whale (listed as endangered under the Endangered Species Act [ESA]) is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in over 15 years and was therefore excluded from further analysis.

Under the proposed action—which includes only the portion of the project that would be completed under this proposed 1-year IHA—a maximum of 195 pile driving days would occur. All piles would be driven with a vibratory hammer for their initial embedment depths, while select piles would be impact driven for their final 10–15 ft (3–4.6 m) for proofing, as necessary. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Sound attenuation measures (i.e., bubble curtain) would be used during all impact hammer operations.

For pile driving activities, the Navy used our current acoustic thresholds, outlined later in this document, for assessing impacts. The Navy used recommended spreading loss formulas (the practical spreading loss equation for underwater sounds and the spherical spreading loss equation for airborne sounds) and empirically-measured source levels from 30- to 66-in diameter steel pile driving events to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that no Level A harassments would occur associated with pile driving or construction activities, and that as many as 18,225 Level B harassments may occur during the wharf construction project from sound produced by pile driving activity.

Description of the Specified Activity

NBKB is located on the Hood Canal approximately 20 miles (32 km) west of Seattle, Washington (see Figures 2–1 through 2–4 in the Navy's application). NBKB provides berthing and support services for OHIO Class ballistic missile submarines (SSBN), also known as TRIDENT submarines. The Navy's construction of the EHW–2 facility at NBKB is planned to support future program requirements for TRIDENT submarines berthed at NBKB. The Navy states that construction of EHW–2 is

necessary because the existing EHW alone will not be able to support future TRIDENT program requirements. Under the MMPA, activities associated with the wharf construction project, including vibratory and impact pile driving operations and vibratory removal of falsework piles, have the potential to cause harassment of marine mammals within the waterways adjacent to NBKB. All in-water construction activities within the Hood Canal are only permitted during July 16–February 15 in order to protect spawning fish populations.

As part of the Navy's sea-based strategic deterrence mission, the Navy Strategic Systems Programs directs research, development, manufacturing, testing, evaluation, and operational support for the TRIDENT Fleet Ballistic Missile program. Development of necessary facilities for handling of explosive materials is part of these duties. The EHW–2 will consist of two components: (1) The wharf proper (or Operations Area), including the warping wharf; and (2) two access trestles. Please see Figures 1–1 and 1–2 of the Navy's application for conceptual and schematic representations of the EHW–2. Details regarding construction plans for the wharf were described in our **Federal Register** notice of proposed authorization (76 FR 79410; December 21, 2011; hereafter, the FR notice); please see that document or the Navy's application for construction details.

For the entire project, a total of up to 1,250 permanent piles ranging in size from 24- to 48-in diameter will be driven in-water to construct the wharf, with up to three vibratory rigs and one impact driving rig operating simultaneously. Construction will also require temporary installation of up to 150 falsework piles used as an aid to guide permanent piles to their proper locations. Falsework piles, which are removed upon installation of the permanent piles, will likely be driven and removed using a vibratory driver. It has not been determined exactly what parts or how much of the project will be completed during the first year; however, a maximum of 195 days of pile driving will occur. The analysis contained herein is based upon the maximum of 195 pile driving days, rather than any specific number of piles driven, and assumes that (1) all marine mammals available to be incidentally taken within the relevant area would be; and (2) individual marine mammals may only be incidentally taken once in a 24-hour period—for purposes of authorizing specified numbers of take—regardless of actual number of exposures in that period. Table 1 summarizes the number and nature of piles required for the entire project, rather than what subset of piles may be expected to be driven during the first year of construction.

TABLE 1—SUMMARY OF PILES REQUIRED FOR WHARF CONSTRUCTION

[In total]

Feature	Quantity
Total number of permanent in-water piles	Up to 1,250.
Size and number of main wharf piles	24-in: 140. 36-in: 157. 48-in: 263.
Size and number of warping wharf piles	24-in: 80. 36-in: 190.
Size and number of lightning tower piles	24-in: 40. 36-in: 90.
Size and number of trestle piles	24-in: 57. 36-in: 233.
Falsework piles	Up to 150, 18- to 24-in.
Maximum pile driving duration	195 days (under 1-year IHA).

Pile installation will employ vibratory pile drivers to the greatest extent possible, and the Navy anticipates that most piles will be able to be vibratory driven to within several feet of the required depth. Pile drivability is, to a large degree, a function of soil conditions and the type of pile hammer. Recent experience at two other construction locations along the NBKB waterfront indicates that most piles should be able to be driven with a vibratory hammer to proper embedment depth. However, difficulties during pile driving may be encountered as a result of obstructions that may exist throughout the project area. Such obstructions may consist of rocks or boulders within the glacially overridden soils. If difficult driving conditions occur, increased usage of an impact hammer will be required. The Navy estimates that up to five piles may be proofed in a day, requiring a maximum total of 1,000 strikes from the impact hammer. Under a worst-case scenario (i.e., difficult subsurface driving conditions encountered), as many as three piles might require driving with an impact hammer to their full embedment depth. With proofing of two additional piles, this scenario would result in as many as 6,400 impact pile strikes in a day. Please see the FR notice (76 FR 79410; December 21, 2011) for more detail.

Impact pile driving during the first half of the in-water work window (July 16 to September 15) would only occur between 2 hours after sunrise and 2 hours before sunset to protect breeding marbled murrelets (*Brachyramphus marmoratus;* an ESA-listed bird under the jurisdiction of the U.S. Fish and Wildlife Service [USFWS]). Between September 16 and February 15, construction activities occurring in the water would occur during daylight hours (sunrise to sunset). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round.

Description of Sound Sources and Distances to Thresholds

An in-depth description of sound sources in general was provided in the FR notice (76 FR 79410; December 21, 2011). Significant sound-producing in-water construction activities associated with the project include impact and vibratory pile driving and vibratory pile removal.

Since 1997, we have used generic sound exposure thresholds as guidelines to estimate when harassment may occur. Current practice regarding exposure of marine mammals to sound defines thresholds as follows: cetaceans and pinnipeds exposed to sound levels of 180 and 190 dB root mean square (rms; note that all underwater sound levels in this document are referenced to a pressure of 1 μPa) or above,

respectively, are considered to have been taken by Level A (i.e., injurious) harassment, while behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 120 dB rms for continuous sound (such as will be produced by vibratory pile driving) and 160 dB rms for pulsed sound (produced by impact pile driving), but below injurious thresholds. For airborne sound, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals (note that all airborne sound levels in this document are referenced to a pressure of 20 μPa).

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. The Navy is required to use sound attenuation devices for all impact pile driving, and has elected to use bubble curtains. Bubble curtains work by creating a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile.

The literature presents a wide array of observed attenuation results for bubble curtains (e.g., WSF, 2009; WSDOT, 2008; USFWS, 2009; Caltrans, 2009). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted (Caltrans, 2009).

Distance to Sound Thresholds

Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Please see the FR notice (76 FR 79410; December 21, 2011) for a detailed description of the calculations and information used to estimate distances to relevant threshold levels. Transmission loss, or the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source, was estimated as so-called ''practical spreading loss''. This model follows a geometric propagation loss based on the distance from the pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In the model used here, the sound pressure level (SPL) at some distance away from the source (e.g., driven pile) is governed by a measured source level, minus the transmission loss of the energy as it dissipates with distance.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding SPLs recorded from pile driving projects is available for consideration. In order to determine reasonable SPLs and their associated affects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action were evaluated. Sound levels associated with vibratory pile removal are assumed to be the same as those during vibratory installation (Caltrans, 2007)—which is likely a conservative assumption—and have been taken into consideration in the modeling analysis. Overall, studies which met the following parameters were considered: (1) Pile size and materials: Steel pipe piles (30–72 in diameter); (2) Hammer machinery: Vibratory and impact hammer; and (3) Physical environment: shallow depth (less than 100 ft [30 m]).

Representative data for pile driving SPLs recorded from similar construction activities in recent years were presented in the FR notice (76 FR 79410; December 21, 2011). As described previously in this document, sound attenuation measures, including bubble curtains, can be employed during impact pile driving to reduce the high source pressures. For the wharf construction project, the Navy intends to employ sound reduction techniques during impact pile driving, including the use of sound attenuation systems (e.g., bubble curtain). The calculations of the distances to the marine mammal sound thresholds were calculated for impact installation with the assumption of a 10 dB reduction in source levels from the use of sound attenuation devices, and the Navy used the mitigated distances for impact pile driving for all analysis in their application. The Navy will require the contractors to employ a bubble curtain with proven performance of 10 dB attenuation and will require measures to ensure that the system is deployed properly.

All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 2. The Navy used source values (at 10 m) of 185 dB for impact driving (the mean SPL of the representative values, less 10 dB of sound attenuation from use of a bubble curtain) and 180 dB for vibratory driving (the worst-case value from the representative data). Use of the mean SPL of values for impact driving was considered appropriate because it matched values from projects where larger-size pile was used and, in addition, matched the value obtained from the Carderock project, which was located at the NBKB waterfront and involved similar pile materials, water depth, and bottom type. Use of the maximum value for vibratory driving was deemed appropriate because no data were available for larger size piles.

Under likely construction scenarios, up to three vibratory drivers would operate simultaneously with one impact driver. Although radial distance and area associated with the zone ensonified to 160 dB rms (the behavioral harassment threshold for pulsed sounds, such as those produced by impact driving) are presented in Table 2 for reference, this zone would be subsumed by the 120 dB rms zone produced by vibratory driving. Although animals may react differently to pulsed sound above 160 dB or non-pulsed sound above 120 dB, there is no practical distinction to be made as regards estimation of incidental take under the multi-rig operating scenario. Animals would not be considered to be taken multiple times if exposed to different types of sound above the thresholds for behavioral harassment. Thus, behavioral harassment of marine mammals associated with impact driving is not considered further here.

The use of multiple similar vibratory rigs that are operating together closely in space and time would not result in larger 120 dB or 180/190 dB isopleths for the hypothetical situation presented here, in which a single vibratory driver produces SPLs of 180 dB rms at 10 m (based upon acoustic monitoring, discussed later, these levels are likely to be lower). For the 120 dB isopleths, sound fields produced would already be truncated by land in the Hood Canal, which has a maximum line-of-sight distance from pile driving locations of 13.8 km. That is, no increase in the size of the actual 120 dB isopleths would occur with multiple vibratory rigs operating simultaneously, because those isopleths as produced by a single rig are already truncated by land (according to predictions from proxy source levels and practical spreading loss—actual isopleth distances are likely to be smaller as shown from monitoring results). If three similar vibratory pile drivers operating simultaneously each

had overlapping 180 dB isopleths, they would produce a combined SPL of approximately 185 dB due to the properties of decibel addition. However, since these drivers will actually be separated in space such that no overlap in 180 dB isopleths would occur, the operation of multiple rigs will not result in any changes to injury zones.

TABLE 2—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Distance	Area, km[2]
Impact driving, pinniped injury (190 dB)	4.9 m	<0.001
Impact driving, cetacean injury (180 dB)	22 m	0.002
Impact driving, disturbance (160 dB)[2]	724 m	1.65
Vibratory driving, pinniped injury (190 dB)	2.1 m	<0.001
Vibratory driving, cetacean injury (180 dB)	10 m	<0.001
Vibratory driving, disturbance (120 dB)	13,800 m[3]	41.4 (15.98)

[1] SPLs used for calculations were: 185 dB for impact and 180 dB for vibratory driving.
[2] Area of 160-dB zone presented for reference. Estimated incidental take calculated on basis of larger 120-dB zone.
[3] Hood Canal average width at site is 2.4 km (1.5 mi), and is fetch limited from N to S at 20.3 km (12.6 mi). Calculated range (over 222 km) is greater than actual sound propagation through Hood Canal due to intervening land masses. 13.8 km (8.6 mi) is the greatest line-of-sight distance from pile driving locations unimpeded by land masses, which would block further propagation of sound.

Hood Canal does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, the calculated distance and areas of impact for the 120 dB threshold cannot actually be attained at the project area. See Figure 6–1 of the Navy's application for a depiction of the size of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Pile driving can generate airborne sound that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near NBKB to be exposed to airborne SPLs that could result in Level B behavioral harassment. A spherical spreading loss model (i.e., 6 dB reduction in sound level for each doubling of distance from the source), in which there is a perfectly unobstructed (free-field) environment not limited by depth or water surface, is appropriate for use with airborne sound and was used to estimate the distance to the airborne thresholds.

As was discussed for underwater sound from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine reasonable airborne SPLs and their associated effects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the Navy's project, as described previously, were evaluated.

Based on in-situ recordings from similar construction activities, the maximum airborne sound levels that would result from impact and vibratory pile driving are estimated to be 97 dB rms re 20 µPa at 160 m and 97 dB rms re 20 µPa at 13 m, respectively (Blackwell *et al.,* 2004; Laughlin, 2010b). The Navy has analyzed the combined sound field produced under the multi-rig scenario and calculated the radial distances to the 90 and 100 dB airborne thresholds as 361 m and 114 m, respectively, equating to areas of 0.41 km^2 and 0.04 km^2, respectively. These distances are predicted to be significantly less for the vibratory driver alone, approximately 28 m (92 ft) and 9 m (30 ft), respectively.

All airborne distances are less than those calculated for underwater sound thresholds. Protective measures will be in place out to the distances calculated for the underwater thresholds, and the distances for the airborne thresholds will be covered fully by mitigation and monitoring measures in place for underwater sound thresholds. Construction sound associated with the project is not predicted to extend beyond the buffer zone for underwater sound that will be established to protect pinnipeds. No haul-outs or rookeries are located within the airborne harassment radii. See Figure 6–2 of the Navy's application for a depiction of the size of areas in which each airborne sound threshold is predicted to occur at the project area due to pile driving.

Acoustic Monitoring

In 2011, the Navy conducted acoustic monitoring as required by IHAs for repair work conducted at the existing EHW (EHW–1) (76 FR 30130; May 24, 2011) and for a test pile project (76 FR 25408; June 30, 2011) conducted in order to obtain geotechnical data in advance of the EHW–2 project. The two projects together involved impact driving of 24- to 48-in piles, vibratory installation of 16- to 48-in piles, and vibratory removal of 12- to 48-in piles. All piles were steel pipe piles. Primary objectives for the acoustic monitoring were to characterize underwater and airborne source levels for each pile size and hammer type and to verify distances to relevant threshold levels by characterizing site-specific transmission loss. Secondary objectives included testing the effective attenuation performance for use of a bubble curtain and investigation of SPLs produced during soft starts. Select results are reproduced here; the interested reader may find the entire reports posted at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

TABLE 3—ACOUSTIC MONITORING RESULTS FROM 2011 ACTIVITIES AT NBKB

Pile size (in)	Hammer type[1]	n[2]	Underwater			Airborne		Distances to threshold (m)[7]					
			RL[3]	SD[4]	TL[5]	RL[6]	SD	190	180	160	120	100	90
24	Impact	1 (2)	174	0.7	13.2	89	n/a	<10	<10	108	n/a	47	150
36	Impact	10 (17)/9	182	5.7	16.4	92	2.3	<10	28	398	n/a	48	150
48	Impact	4 (8)	187	4.4	13.4	91	2.1	<10/15	40	1,180	n/a	34	108
24	Vibratory	4 (7)/2	164	5.0	17.4	91	1.4			n/a	2,635	14	45
36	Vibratory (I)	23 (42)/30	162	4.3	15.1	93	2.9			n/a	6,082	20	64
36	Vibratory (R)	21 (36)	157	4.5									

TABLE 3—ACOUSTIC MONITORING RESULTS FROM 2011 ACTIVITIES AT NBKB—Continued

Pile size (in)	Hammer type [1]	n [2]	Underwater			Airborne		Distances to threshold (m) [7]					
			RL [3]	SD [4]	TL [5]	RL [6]	SD	190	180	160	120	100	90
48	Vibratory (I)	7 (14)/11	163	5.1	16.3	94	3.2	.....	.....	n/a	5,046	24	75
48	Vibratory (R)	8 (15)	155	4.5				.....	.....				
12	Vibratory (R)	6 (4) [8]	160	2.4	16.5	.....	.....	.....	.....	n/a	5,375	22	69
16	Vibratory (I)	8 (16)	159	4.7		.....	.....	.....	.....	n/a			
30	Vibratory (I)	44 (87)	165	4.5		.....	.....	.....	.....	n/a		44	138

[1] For vibratory hammer, I = installation and R = removal. Because of limited sample size for 24-in piles, all events were combined. All data for impact driving include use of bubble curtain.

[2] n = sample size, or number of measured pile driving events. For categories where two numbers are listed, sample size was different for underwater and airborne measurements. For underwater, each event may have up to two measurements because two hydrophones were deployed at different depths; however, both hydrophones did not produce usable data for all events. For airborne events, each event represents a single measurement. Information is presented as follows: # underwater events measured (total # measurements; maximum would be twice the total # events)/# airborne events measured (if different).

[3] Received level at 10 m, presented in dB re: 1 μPa rms.

[4] Standard deviation.

[5] Transmission loss (log_{10}). Mean TL calculations for vibratory driving were not separated by I/R. A single mean TL value was calculated for 12/16/30-in piles.

[6] Received level at 15 m, presented in dB re: 20 μPa rms. Airborne measurements were combined for I/R events, as no difference in airborne SPLs would be expected. No near-source measurements were conducted for 12/16/30-in piles.

[7] Indicated thresholds are in dB rms and correspond with those described previously under Description of Sound Sources and Distances to Thresholds. Combined values for mean distance to threshold were calculated for I/R events and for airborne sound. Values were calculated using interpolated TL values and SPL measurements at multiple distances from the source. A dash indicates that mean source level was below the relevant threshold. For impact driving of 48-in piles, mean distance to the 190 dB threshold was calculated as being <10 m for measurements taken at the mid-depth hydrophone and 15 m for measurements taken at the deep hydrophone. For all others, mean of the mean values taken at mid-depth and deep hydrophone is presented.

[8] These six events were measured in two episodes; i.e., three separate events were measured to provide a mean in each of two episodes.

Comparison of Predictions and Measurements

The project activities involve impact driving of 24- to 48-in steel piles and vibratory driving of 18- to 48-in steel piles. As shown by the empirical data collected during 2011 activities, the proxy value selected for impact driving (185 dB for impact driving with use of bubble curtain) is generally accurate, although SPLs from driving of 48-in piles may be somewhat louder than expected. This may be because data show that realized performance from the bubble curtain may be somewhat less than the expected 10 dB, although testing performed in 2011 was likely inadequate due to restrictions on the number of unattenuated pile strikes. No further testing will be performed because of similar restrictions placed on impact pile driving by the USFWS due to potential impacts to the marbled murrelet, an ESA-listed bird species. The selected proxy value for vibratory driving (180 dB) appears to be very conservative, with the highest SPLs recorded for vibratory driving being 165 dB at 10 m. Site-specific propagation loss appears to be generally greater than practical spreading loss, although the values are variable and sometimes less than practical spreading.

Impact driving is unlikely to exceed the injury threshold for pinnipeds (190 dB rms) at 10 m. The mean received level at 10 m for 36-in piles was 182 dB rms, while the mean for 48-in piles was 187 dB rms (with measurements from only four events). Vibratory driving is not likely to produce sound levels exceeding the thresholds for Level A harassment (i.e., 180/190 dB rms). The actual distance to the 120 dB rms behavioral harassment threshold is likely to be significantly smaller than predicted as the largest observed mean distance to threshold was 6,082 m for 36-in piles.

Mean distances to airborne thresholds were smaller than those predicted for the multi-rig pile driving scenario. Observed distances for 2011 activities were smaller than the least distance to an available haul-out area. However, regardless of actual distance to threshold, it is likely that any animal exposed to airborne sound that may result in behavioral harassment would also be exposed to underwater sound above behavioral harassment thresholds, even if hauled-out during pile removal activity. We recognize that swimming pinnipeds may be exposed to airborne sound that may cause behavioral harassment if they raise their heads above water within the relevant zone; however, for purposes of take estimation these are accounted for through estimation of incidental take resulting from underwater sound. An animal is considered to be 'available' for incidental take by behavioral harassment only once per 24-hour period, regardless of source.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on December 21, 2011 (76 FR 79410). NMFS received comments from the Marine Mammal Commission (Commission). The Commission's comments, and our responses, are provided here. We have determined that the mitigation measures described here will effect the least practicable impact on the species or stocks and their habitats.

Comment 1: The Commission recommends that we require the Navy to measure in-air sound levels as a function of distance from the vibratory and impact hammers and make concurrent observations of marine mammal behavioral responses to in-air sound produced by pile driving and removal activities.

Response: We concur with the Commission's recommendation. As originally proposed, the Navy will measure airborne sound levels associated with representative scenarios of project activities. The specifics of the monitoring protocol are described in detail in the Navy's Acoustic Monitoring Plan. The Navy will make concurrent observations of behavioral reactions and, if possible, relate these to approximate received levels of sound in order to better understand what levels of sound might result in behavioral harassment given the context present at the time of the observation. The Commission also notes that they would welcome the opportunity to consult with us to (1) identify the types of activities that have the potential to take marine mammals by exposure to in-air sounds, (2) determine the best scientific basis for identifying exposure thresholds of concern, and (3) develop research strategies for gathering the information needed to set more reliable thresholds. We look forward to working with the Commission to better understand these issues.

The Commission also encourages us to simply specify that the authorized number of takes of pinnipeds by Level B harassment, although based upon the predicted footprint of underwater sound, could occur by exposure to underwater and/or airborne sound when

the animals are within an area that is ensonified to both 160 dB or 120 dB underwater (pulsed/non-pulsed sounds, respectively) and 90/100 dB in-air (harbor seals and other pinnipeds, respectively), rather than attempting to predict these takes separately. We agree with that recommendation, and reflect the recommendation in our amendment of the take authorization. Pinnipeds, whether hauled-out or looking with head above water in the project vicinity, may be exposed to both airborne and underwater sound levels that could cause behavioral reactions indicating harassment. We consider exposure of the same individual to different stimuli that may potentially result in harassment—whether airborne or underwater sound or pulsed or non-pulsed sound—within the same 24-hour period to be a single incidence of take.

Comment 2: The Commission recommends that we require the Navy to re-estimate the number of in-water and in-air takes using the overall density of harbor seals in Hood Canal (i.e., 3.74 animals/km^2) or to use a different density estimate if monitoring data indicate one that is appropriate.

Response: We disagree with the Commission's recommendation and feel that the density estimate used for estimating potential incidental take is sufficiently conservative. As described in greater detail in the FR notice of proposed authorization (76 FR 79410; December 21, 2011), the Navy's density estimate relies on work showing that, of an estimated 1,088 seals resident to the Hood Canal, approximately 35 percent will be in the water at any given time (Huber *et al.,* 2001; Jeffries *et al.,* 2003), producing a density estimate of 1.31 seals/km^2. The Commission contends that this will result in an underestimate of take, because essentially all of the seals may enter the water over the matter of hours during which pile driving may occur in a day. It is possible that greater than 35 percent of seals could enter the water during the course of pile driving activity. However, remembering that the population estimate of 1,088 seals represents the entirety of Hood Canal (291 km^2 vs. the 41.4 km^2 predicted area of effect), it is unlikely that all of these animals would be exposed to elevated levels of sound from the project, even over the course of multiple days. No data exist regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals above 35 percent may potentially be exposed to underwater sound. There are no existing data that would indicate that the proportion of individuals entering the water within the predicted area of effect during pile driving would be dramatically larger than 35 percent; thus, the Commission's suggestion that 100 percent of the population be used to estimate density would likely result in a gross exaggeration of potential take.

In addition, there are a number of factors indicating that the density we used should not result in an underestimate of take. Hauled-out harbor seals are necessarily at haul-outs, and no significant harbor seal haul-outs are located within or near the action area. Harbor seals observed in the vicinity of the NBKB shoreline are rarely hauled-out (for example, in formal surveys during 2007–08, approximately 86 percent of observed seals were swimming), and when hauled-out, they do so opportunistically (i.e., on floating booms rather than established haul-outs). Harbor seals are typically unsuited for using manmade haul-outs at NBKB, which are used by sea lions. Primary harbor seal haul-outs in Hood Canal are located at significant distance (20 km or more) from the action area in Dabob Bay or further south (see Figure 4–1 in the Navy's application), meaning that animals casually entering the water from haul-outs or flushing due to some disturbance at those locations would not likely be exposed to underwater sound from the project; rather, only those animals embarking on foraging trips and entering the action area may be exposed. Moreover, because the Navy is unable to determine from field observations whether the same or different individuals are being exposed, each observation will be recorded as a new take, although an individual theoretically would only be considered as taken once in a given day.

There are two final factors that support the conservatism of the 1.31 density estimate: (1) Limited surveys conducted during construction in Hood Canal during off days in 2011 produced an uncorrected density estimate of approximately 0.55 seals/km^2; and (2) although authorized to incidentally take 1,668 seals (corrected for actual number of pile driving days) during two projects conducted in Hood Canal in 2011, the total estimate of actual take (observed takes and observations extrapolated to unobserved area) was only 187 seals.

Comment 3: The Commission recommends that we require the Navy to measure in-situ sound levels for 30 days after the initiation of major pile-driving scenarios and then provide the analytical results (i.e., sound levels as a function of distance) within an additional 15 days; if the Navy is unable to meet the 15-day analysis deadline, then require the Navy to use maximum distances to the Level A harassment thresholds of 190 dB re 1 µPa (i.e., 20 m for 36- and 48-in piles) and 180 dB re 1 µPa (i.e., 200 m for 36-in and 120 m for 48-in piles) from the test pile program until the in-situ sound measurement data have been analyzed and the distances to thresholds verified for EHW–2.

Response: Because of difficulties implementing similar measures required under previous IHAs issued for activities conducted in 2011, which we have discussed at length with the Navy, we have determined that a requirement to adjust zones within 15 days of the completion of a 30-day acoustic monitoring period is impracticable in this situation. The Commission cites two projects in which adjustment of zones are required within a short timeframe; however, we do not believe that these projects offer comparable context as they are in a more sensitive environment (the Arctic) and are for activity with a larger footprint of more intense effect (seismic surveys). Given that the Navy is unable to meet the 15-day analysis deadline recommended by the Commission, we partially accept the Commission's alternative recommendation to use maximum distances to Level A harassment thresholds from empirical measurements completed in 2011. We will require the Navy to implement a 20 m shutdown zone around all pile driving for pinnipeds, but will require only an 85 m shutdown zone for cetaceans. The rationale for this reduction from the recommendation is described in detail under the ''Mitigation'' section, later in this document. However, although unable to meet the recommended 15-day analysis timeframe, the Navy (in addition to implementing the precautionary zones described here) will complete analysis of acoustic monitoring data and adjust zones as necessary no later than 90 days following the completion of the acoustic monitoring period.

Comment 4: The Commission recommends that we require the Navy to conduct in-situ sound measurements if and when vibratory hammers are used concurrently and to use that information to ensure that it (1) expands appropriately the size of the Level B harassment zone for in-water sounds, (2) monitors the entire expanded zone, and (3) estimates the resulting number of takes accurately.

Response: As originally proposed, the Navy will be required to conduct acoustic monitoring for representative pile driving scenarios, including the multi-rig scenario (simultaneous use of three vibratory and one impact rig) comprising the maximum production of sound. These data will enable understanding of the size of the actual Level B harassment zone which, in concert with observational data, will produce a record of actual incidental take. As described frequently, it is not practicable for the Navy to monitor the entire Level B harassment zone. However, although the size of the Level B harassment zone may fluctuate based on the number of drivers in use if the zone is in fact smaller than the predicted zone, it is not possible for the predicted zone to grow as it is defined not by the predicted sound pressure levels but by the contours of the Hood Canal shoreline. The properties of decibel addition and the way that addition of multiple driving rigs is likely to affect the sound field were described in greater detail earlier in this document, under ''Distance to Sound Thresholds''.

Comment 5: The Commission recommends that we require the Navy to implement soft-start procedures after 15 minutes if pile driving or removal was delayed or shut down because of the presence of a marine mammal within or approaching the shutdown zone.

Response: We disagree with this recommendation. The Commission cites several reasons why pinnipeds may remain in a shutdown zone after shutdown and yet be undetected by observers during the 15 minute clearance period (e.g., perception and availability bias). While this is possible in theory, we find it extremely unlikely that an animal could remain undetected in such a small zone and under typical conditions in Hood Canal. The shutdown zone for pinnipeds has a 20 m radial distance, while typical observation conditions in the Hood Canal are excellent. We believe the possibility of a pinniped remaining undetected in the shutdown zone, in relatively shallow water, for greater than 15 minutes is discountable. A requirement to implement soft start after every shutdown or delay less than 30 minutes in duration would be impracticable, resulting in significant construction delays and therefore extending the overall time required for the project, and thus the number of days on which disturbance of marine mammals could occur.

Comment 6: The Commission recommends that we require the Navy to develop a monitoring strategy that ensures it will be able to detect and characterize marine mammal responses to the pile driving and removal activities as a function of sound levels and distance from the pile driving and removal sites.

Response: We believe that the Navy, in consultation with NMFS, has developed such a strategy. The Commission states that the goal is not simply to employ a strategy that ensures monitoring out to a certain distance, but rather to employ a strategy that provides the information necessary to determine if the construction activities have adverse effects on marine mammals and to describe the nature and extent of those effects. We agree with that statement, and note that the Navy does not simply monitor within defined zones, ignoring occurrences outside those zones. The mitigation strategy is designed to implement shutdown of activity only for marine mammal occurrence within designated zones, but all observations of marine mammals, and any observed behavior, whether construed as a reaction to project activity or not, are recorded, regardless of distance to project activity. This information is coupled with acoustic monitoring data (i.e., sound levels recorded at multiple defined distances from the activity) to draw conclusions about the impact of the activity on marine mammals. Additionally, the larger monitoring effort conducted by the Navy in deeper waters of Hood Canal during their 2011 project monitoring was an important piece of the Navy's overall monitoring strategy for the ongoing suite of actions at NBKB and may reasonably be used as a reference for the current activities. Using that information, as well as the results of a more limited deep-water component of the monitoring program for 2012, we can gain an acceptable understanding of marine mammal occurrence and behavior within the Level B harassment zone in deeper waters beyond the waterfront restricted area, which is intensively monitored. It is unclear what aspects of the monitoring goals or strategy the Commission deems inadequate.

Comment 7: The Commission recommends that we complete an analysis of the impact of the proposed activities together with the cumulative impacts of all the other pertinent risk factors (including but not limited to the Navy's concurrent EHW–1 repair project) impacting marine mammals in the Hood Canal area prior to issuing the proposed incidental harassment authorization.

Response: Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the harassment incidental to a specified activity will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise).

In addition, cumulative effects were addressed in the Navy's Environmental Impact Statement and in the biological opinion prepared for this action. These documents, as well as the relevant Stock Assessment Reports, are part of NMFS' Administrative Record for this action, and provided the decision-maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

Comment 8: The Commission recommends that we encourage the Navy to combine future requests for incidental harassment authorizations for all activities that would occur in the same general area and within the same year rather than segmenting those activities and their associated impacts by requesting separate authorizations.

Response: We agree with the Commission's recommendation and have encouraged the Navy to do so.

Comment 9: The Commission recommends that we adopt a policy to provide an additional opportunity for public review and comment before amending authorizations if any substantive changes are made to them after they have been issued or if the information on which a negligible impact determination is based is significantly changed in a way that indicates the likelihood of an increased level of taking or impacts not originally considered.

Response: We disagree with the Commission's contention that the referenced IHA modifications constituted a substantive change. The modifications involved small increases to the amount of incidental take of harbor porpoise authorized for two

projects conducted in 2011 at NBKB in response to new information about harbor porpoise occurrence and habitat use at NBKB. In our findings for the referenced modification, we determined that authorization of the incidental taking, by Level B harassment only, of increased numbers of harbor porpoise did not alter the original scope of activity analyzed, the monitoring and mitigation measures implemented, or the impact analysis in a manner that materially affected the basis for our original findings. The increased level of authorized take for harbor porpoise remained a small number, by any definition of that term. The Inland Washington stock of harbor porpoise is not listed under the ESA, nor is it considered depleted or designated as a strategic stock under the MMPA. The increase in takings was considered negligible in comparison with the overall population of the stock. The modifications reflected a more complete understanding of harbor porpoise presence and use of habitat in the Hood Canal, but constituted a negligible increase in impacts to the stock. We believe that those modifications were within the scope of analysis supporting the determinations for the original IHAs, and that those original findings remained valid. Nevertheless, we thank the Commission for the recommendation and will consider it in the future for situations where substantive changes are required.

Description of Marine Mammals in the Area of the Specified Activity

There are seven marine mammal species, four cetaceans and three pinnipeds, which may inhabit or transit through the waters nearby NBKB in the Hood Canal. These include the transient killer whale, harbor porpoise, Dall's porpoise, Steller sea lion, California sea lion, harbor seal, and humpback whale. While the Southern Resident killer whale is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in over 15 years, and therefore was excluded from further analysis. The Steller sea lion and humpback whale are the only marine mammals that may occur within the Hood Canal that are listed under the ESA; the humpback whale is listed as endangered and the eastern distinct population segment (DPS) of Steller sea lion is listed as threatened. All marine mammal species are protected under the MMPA. The FR notice (76 FR 79410; December 21, 2011) summarizes the population status and abundance of these species and provides detailed life history information. A description of the humpback whale is provided here, as the recent sighting of an individual of that species occurred after the FR notice was published.

Humpback Whale

Species Description—The humpback whale is a baleen whale, and a member of the Balaenopterid family (rorquals), with a worldwide distribution in all ocean basins. Similar to all baleen whales, adult females are larger than adult males, reaching lengths of up to 60 ft (18 m). Their body coloration is primarily dark grey, but individuals have a variable amount of white on their pectoral fins and belly. This variation is so distinctive that the pigmentation pattern on the undersides of their flukes is used to identify individual whales. Humpback whales are known for their long pectoral fins, which can be up to 15 ft (4.6 m) in length and provide significant maneuverability. In the summer, most humpback whales are found in high latitude or highly biologically productive feeding grounds. In the winter, they congregate in subtropical or tropical waters for mating.

In the North Pacific, there are at least three separate populations: (1) CA/OR/WA stock, which winters in coastal Central America and Mexico and migrates to areas ranging from the coast of California to southern British Columbia in summer/fall; (2) Central North Pacific stock, which winters in the Hawaiian Islands and migrates to northern British Columbia/Southeast Alaska and Prince William Sound west to Kodiak; and (3) Western North Pacific stock, which winters near Japan and probably migrates to waters west of the Kodiak Archipelago (the Bering Sea and Aleutian Islands) in summer/fall. Though there is some mixing between these populations, they are considered distinct stocks. The stock structure of humpback whales is defined based on feeding areas, as distinct populations have a high degree of fidelity to specific feeding areas. Humpback whales found in inland Washington waters are members of the CA/OR/WA stock. Carretta *et al.* (2011) described distinct feeding populations in the eastern Pacific, and the waters off northern Washington may be an area of mixing between the CA/OR/WA stock and British Columbia/Alaska whales, or whales in northern Washington and southern British Columbia may be a distinct feeding population and a separate stock.

Status—Humpback whales were listed as endangered under the Endangered Species Preservation Act of 1966 because of declines due to commercial whaling. This protection was transferred to the ESA in 1973. Because of this listing, it is therefore designated as depleted and classified as a strategic stock under the MMPA. The recovery plan for humpback whales was finalized in November 1991 (NMFS, 1991). Critical habitat has not been designated for this species.

Humpback whales are increasing in abundance through much of their range, including the CA/OR/WA stock. In the North Pacific, humpback abundance was estimated at fewer than 1,400 whales in 1966, after heavy commercial exploitation. The current abundance estimate for the North Pacific is about 20,000 whales in total. Carretta *et al.* (2011) reported the best estimate for the CA/OR/WA stock as 2,043 individuals, based on mark-recapture estimates by Calambokidis *et al.* (2009). However, this estimate excludes some whales in Washington. Population trends from mark-recapture estimates have shown an overall long-term increase of approximately 7.5 percent per year for the CA/OR/WA stock (Calambokidis, 2009).

Distribution—The worldwide population of humpback whales is divided into various northern and southern ocean populations (Mackintosh, 1965). Geographical overlap of these populations has been documented only off Central America (Acevedo and Smultea, 1995; Rasmussen *et al.,* 2004, 2007). The humpback whale is one of the most abundant cetaceans off the Pacific coast of Costa Rica during the winter breeding season of northern hemisphere humpbacks.

Humpback whales were one of the most common large cetaceans in the inland waters of Washington prior to the early 1900s (Scheffer and Slipp, 1948). However, sightings became infrequent in Puget Sound and the Georgia Basin through the late 1990s, and prior to 2003 the presence of only three individual humpback whales was confirmed (Falcone *et al.,* 2005). However, in 2003 and 2004, thirteen individuals were sighted in the inland waters of Washington, mainly during the fall (Falcone *et al.,* 2005). Records available for 2001 to 2011 include observations in the Strait of Juan de Fuca; the Gulf Islands and the vicinity of Victoria, British Columbia; Admiralty Inlet; the San Juan Islands; and Puget Sound (Orca Network, 2012).

In Hood Canal, several humpback whale sightings were recorded beginning on January 27, 2012 (Orca Network, 2012). Review of the sightings information indicates the sightings are of a single individual. The last reported

sighting was on February 17, 2012, and the individual has almost certainly departed the Hood Canal. Prior to these sightings, there have been no confirmed reports of humpback whales entering Hood Canal (Calambokidis, 2012). No other reports of humpback whales in the Hood Canal were found in the Orca Network database, the scientific literature, or agency reports. Construction of the Hood Canal Bridge occurred in 1961 and could have contributed to the lack of historical sightings (Calambokidis, 2010). Only a few records of humpback whales near Hood Canal are in the Orca Network database, but these are north of the Hood Canal Bridge.

Behavior and Ecology—Humpback whales travel great distances during their seasonal migrations from high latitude feeding grounds to tropical and subtropical breeding grounds. One of the more closely studied routes is between Alaska and Hawaii, where humpbacks have been observed making the 3,000 mi (4,830 km) trip in as few as 36 days. During the summer months, humpbacks spend the majority of their time feeding and building up fat reserves (blubber) that they will live off of during the winter breeding season. Humpbacks filter feed on tiny crustaceans (mostly krill), plankton, and small fish and are known to consume up to 3,000 lb (1,360 kg) of food per day. Several hunting methods involve using air bubbles to herd, corral, or disorient fish. One highly complex variant, called bubble netting, is unique to humpbacks and is often performed in groups with defined roles for distracting, scaring, and herding before whales lunge at prey corralled near the surface. While on their winter breeding grounds, humpback whales congregate and engage in mating activities. Humpbacks are generally polygynous, with males exhibiting competitive behavior including aggressive and antagonistic displays. Breeding usually occurs once every 2 years, but sometimes occurs twice in 3 years.

Although the humpback whale is considered a primarily coastal species, it often traverses deep pelagic areas while migrating (Clapham and Mattila, 1990; Norris *et al.,* 1999; Calambokidis *et al.,* 2001). During migration, humpbacks stay near the surface of the ocean, and tend to generally prefer shallow waters. During calving, humpbacks are usually found in the warmest waters available at that latitude. Calving grounds are commonly near offshore reef systems, islands, or continental shores. Humpback feeding grounds are in cold, productive coastal waters.

Humpback whales are often sighted singly or in groups of two or three, but while on breeding and feeding grounds they may occur in groups larger than twenty (Leatherwood and Reeves, 1983; Jefferson *et al.,* 2008). The diving behavior of humpback whales is related to time of year and whale activity (Clapham and Mead, 1999). In summer feeding areas, humpbacks typically forage in the upper 120 m of the water column, with a maximum recorded dive depth of 500 m (Dolphin, 1987; Dietz *et al.,* 2002). On winter breeding grounds, humpback dives have been recorded at depths greater than 100 m (Baird *et al.,* 2000). The CA/OR/WA stock winters in coastal Central America and Mexico, and the stock migrates to areas ranging from the coast of California to southern British Columbia in summer and fall.

Acoustics—Humpback whales, like all baleen whales, are considered low-frequency cetaceans. Functional hearing for low-frequency cetaceans is estimated to range from 7 Hz to 22 kHz (Southall *et al.,* 2007). During the winter breeding season, males sing complex songs that can last up to 20 minutes and be heard at great distance, and may sing for hours, repeating the song several times. All males in a population sing the same song, but that song continually evolves over time.

Potential Effects of the Specified Activity on Marine Mammals

We have determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of marine mammals that may be present in the project vicinity while construction activity is being conducted. Pile driving could potentially harass those pinnipeds that are in the water close to the project site, whether exposed to airborne or underwater sound. The FR notice (76 FR 79410; December 21, 2011) provides a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

Anticipated Effects on Habitat

The proposed activities at NBKB would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km (6.2 mi), foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near NBKB and minor impacts to the immediate substrate during construction activity associated with the EHW–2 project. The FR notice (76 FR 79410; December 21, 2011) describes these potential impacts in greater detail.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, we must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

A combination of predictions—based on proxy values and practical spreading loss—and measured values for zones of influence (ZOIs; see ''Estimated Take by Incidental Harassment'') were used to develop mitigation measures for pile driving activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the measures described later in this section, the Navy would employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) Comply with applicable equipment sound standards and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment.

(c) For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to

maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile); (3) removal of the pile from the water column/substrate via a crane (i.e., deadpull); or (4) the placement of sound attenuation devices around the piles. For these activities, monitoring would take place from 15 minutes prior to initiation until the action is complete.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury, serious injury, or death of marine mammals. Predictions indicate (and empirical measurements generally confirm) that radial distances to the 190-dB threshold will typically be less than 10 m for impact pile driving or, in the case of vibratory pile driving, would not exist because source levels are lower than the threshold. However, shutdown zones for pinnipeds will conservatively be set at a minimum 20 m during impact pile driving and 10 m during vibratory pile driving. For impact pile driving, the distance corresponds with the largest distance to the 190 dB threshold measured during 2011 acoustic monitoring. These precautionary measures are intended to further reduce any possibility of injury to pinnipeds by incorporating a buffer to the 190-dB threshold within the shutdown area.

For cetaceans, the distance to the shutdown zone corresponding to the 180-dB threshold will be set at 85 m for impact pile driving and 10 m for vibratory pile driving. There is little risk of injury to cetaceans, as none have ever been observed entering the port security barrier (PSB) delineating the waterfront restricted area (WRA) at NBKB. Cetaceans are capable of passing underneath this barrier, which lies at variable distances from the construction site but is approximately 500 m distant in the direction of the deeper waters of Hood Canal where cetaceans might be expected to occur, but have not been observed to do so. It is unknown whether cetaceans do not enter the WRA because of the physical presence of the PSB, the lack of attraction to shallower-water habitats, or another reason. For impact pile driving, the mean of all data points is approximately 64 m to threshold; however, the maximum value recorded was 200 m. While it may be argued that a precautionary approach similar to that employed for the 190-dB zone is warranted, in which the shutdown zone encompasses the largest measured value, it is our view that use of such a large zone for cetaceans would distract from biological monitors' primary task of ensuring that no pinnipeds (the only animals expected to occur within the WRA) are exposed to sounds that may result in injury. As described previously, no cetaceans are expected—and none have ever been observed—so close to the construction area. Therefore, while some degree of precaution is warranted for cetaceans, the larger zone (200 m) would detract from the Navy's ability to effectively mitigate the possibility of pinniped injury while conferring no additional benefit on cetaceans. In order to determine a reasonable shutdown zone for cetaceans during impact pile driving, we examined the available data, which show two clusters at 20 m and under (9 of 22 data points) and between 50–120 m (11 of 22 data points). The mean of this second cluster is found at 85 m; this distance encompasses approximately 65 percent of measurements. We emphasize again that establishment of this zone is intended only as a precautionary measure as no cetaceans have been observed within the WRA.

Disturbance Zone—Disturbance zones are typically defined as the area in which SPLs equal or exceed 160 or 120 dB rms (for pulsed or non-pulsed sound, respectively). Because the 120 dB zone would always subsume the 160 dB zone under the multi-rig scenario considered here, the 160 dB harassment zone is not considered further. Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see Monitoring and Reporting). As with any such large action area, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound.

When the size of a disturbance zone is sufficiently large as to make monitoring of the entire area impracticable (as in the case of the zone for vibratory pile driving, predicted to encompass an area of 41.4 km^2), the disturbance zone may be defined as some area that may reasonably be monitored or, alternatively, is a de facto zone defined by the distance that monitors are capable of observing from defined deployment locations. In this situation, the bulk of monitoring (as described in the Navy's Marine Mammal Monitoring Plan) will be focused within the WRA and on the shutdown zones. One observer will be designated specifically to monitor shutdown zones for each active pile driving rig, with one additional observer tasked with monitoring additional areas outside of the shutdown zones but within the WRA. It is unlikely that observers stationed within the WRA will be able to effectively monitor any area outside of the WRA, due to distance from the observer as well as the physical presence of the PSB. However, during the period of acoustic monitoring, a vessel will be stationed outside of the WRA and will carry a biological monitor. This period will occur for no less than 30 days and is expected to provide verification of assumptions regarding the distribution and frequency of occurrence of animals in the deeper waters of Hood Canal that have been developed from literature, past monitoring and reports, and marine mammal monitoring conducted at NBKB in 2011.

In order to document observed incidences of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for

estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities, with minimum 20 m/85 m shutdown zones surrounding each pile for pinnipeds and cetaceans, respectively. In addition, observers shall record all incidences of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Please see the Marine Mammal Monitoring Plan (available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Navy in agreement with us, for full details of the monitoring protocols.

Detailed observations outside the WRA, as defined by the PSB, are likely not possible, and it would be impossible for the Navy to account for all individuals occurring within the full disturbance zone with any degree of certainty. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers. A minimum of one observer shall be employed to observe shutdown zones for each active pile driving rig, in addition to one observer tasked with monitoring the area outside of the shutdown zones. For the multi-rig scenario using three vibratory drivers and one impact driver simultaneously, this would result in a minimum total of five observers. In addition, at least one observer shall be positioned on the acoustic monitoring vessel outside the WRA for as long as that vessel is present, but for no less than 30 days. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Trained observers will be placed at the best vantage point(s) practicable, as defined in the Navy's Marine Mammal Monitoring Plan, to monitor for marine mammals and implement shutdown or delay procedures when applicable by calling for the shutdown to the equipment operator.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.).

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile. Under certain construction circumstances where initiating the shutdown and clearance procedures would result in an imminent concern for human safety, to be determined by the on-site construction supervisor in consultation with the lead observer, the shutdown provision may be waived.

(4) All shutdown zones will be established as described. However, in-situ acoustic monitoring will be utilized to determine the actual distances to these threshold zones, and the size of the shutdown zones will be adjusted accordingly based on received SPLs. We have determined that real-time adjustment of zones is impracticable, considering the resources required to implement such a measure, the nature of the activity, and the existence of empirical data from 2011 acoustic monitoring upon which precautionary zones may be based. Zones shall be adjusted as necessary upon provision of the draft acoustic monitoring report from contractors to the Navy, no later than 90 days from the end of the acoustic monitoring period. However, the precautionary shutdown zone established for pinnipeds (i.e., 20 m) would not be decreased.

Sound Attenuation Devices

Bubble curtains shall be used during all impact pile driving. Testing of the device, accomplished by comparing measurements of attenuated and unattenuated strikes, is not possible because of requirements in place to protect marbled murrelets (an ESA-listed bird species under the jurisdiction of the USFWS). In the absence of testing, the Navy shall ensure, through whatever means possible (e.g., requirements in contract language regarding the device selected for use and measures ensuring proper deployment of the device), that the device is capable of achieving mean performance of 10 dB attenuation although a high degree of performance variability may be expected.

Timing Restrictions

The Navy has set timing restrictions for pile driving activities to avoid in-water work when ESA-listed fish populations are most likely to be present. The in-water work window for avoiding negative impacts to fish species is July 16–February 15. The initial months (July to September) of the timing window overlap with times when Steller sea lions are not expected to be present within the project area and

California sea lions may be expected to be less numerous.

Soft-Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning, or providing marine mammals a chance to leave the area prior to the hammer operating at full capacity. The wharf construction project will utilize soft-start techniques (ramp-up and dry fire) for impact and vibratory pile driving. The soft-start requires contractors to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 30-second waiting period. This procedure is repeated two additional times. For impact driving, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent three strike sets.

Daylight Construction

Impact pile driving during the first half of the in-water work window (July 16 to September 15) would only occur between 2 hours after sunrise and 2 hours before sunset to protect breeding marbled murrelets. Vibratory pile driving and other construction activities occurring in the water between July 16 and September 15 could occur during daylight hours (sunrise to sunset). Between September 16 and February 15, construction activities occurring in the water would occur during daylight hours (sunrise to sunset).

Mitigation Effectiveness

It should be recognized that although marine mammals would be protected from Level A harassment by the utilization of a bubble curtain and monitoring of the near-field injury zones, monitoring is not likely to be 100 percent effective at all times in locating marine mammals in the waters surrounding the shutdown zone and may not be 100 percent effective in detecting animals even within the shutdown zone. The efficacy of visual detection depends on several factors including the observer's ability to detect the animal, the environmental conditions (visibility and sea state), the behavior and depth of the animal, and monitoring platforms.

All observers employed for mitigation activities would be experienced biologists with training in marine mammal detection and behavior. Based on the specialized training required of observers and the small shutdown zones, we expect that visual mitigation will be highly effective. Trained observers have specific knowledge of marine mammal physiology, behavior, and life history, which may improve their ability to detect individuals or help determine if observed animals are exhibiting behavioral reactions to construction activities. In addition, conditions at NBKB—relatively calm wind and sea conditions throughout most of the year—are conducive to effective visual monitoring.

We have carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered or recommended by NMFS biologists, the Navy, and the Commission, we have determined that these mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that we must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Please see the Navy's Marine Mammal and Acoustic Monitoring Plans for full details of the requirements for monitoring and reporting.

Acoustic Measurements

Within the first 30 days of pile driving, the Navy will capture a representative acoustic sample of the major pile driving scenarios under the modeled conditions (impact hammer and vibratory driving, smaller [24-in to 36-in] and larger [48-in] piles, plumb and batter piles). All measurements will be made with the sound attenuation measures discussed previously in place. Maximum sound pressure levels, as well as approximate distances to relevant thresholds, will be measured and documented. Airborne acoustic monitoring will also be conducted during impact and vibratory pile driving. Acoustic monitoring will be conducted in accordance with the Acoustic Monitoring Plan developed by the Navy and approved by us. Please see that plan, available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm,* for full details of the required acoustic monitoring.

Some details of the methodology include:

- For underwater recordings, a stationary hydrophone system with the ability to measure SPLs at mid-water depth and approximately 1 m from the bottom, (taking tidal changes into account) will be placed at a distance of 10 m from the source. The hydrophone will be deployed so as to maintain a constant distance of 10 m from the pile.
- For airborne recordings, reference recordings will be attempted at approximately 50 ft (15.2 m) from the source via a stationary hydrophone. However, other distances may be utilized to obtain better data if the pile driving signal cannot be isolated clearly due to other sound sources (e.g., barges or generators). The best professional judgment of the contractor employed to implement the monitoring will be sufficient to ensure the monitoring objectives are achieved.
- Each hydrophone (underwater) and microphone (airborne) will be calibrated prior to the start of the action and will be checked at the beginning of each day of monitoring activity. Unattended hydrophones located in the far-field will be checked regularly to ensure that equipment failure or other technical difficulty, such as strumming, does not render measurements unusable. Other hydrophones and microphones would be placed at other distances and/or depths and moved as necessary to determine the distance to the thresholds for marine mammals. At a minimum, one attended platform will be located in the far-field (i.e., outside the WRA) for the duration of acoustic monitoring.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring.

The Navy will monitor the shutdown zone and disturbance zone within the WRA before, during, and after pile driving as described under mitigation and in the Marine Mammal Monitoring Plan. There will, at all times, be at least one observer stationed at an appropriate vantage point to observe the shutdown zones associated with each operating hammer and at least one additional observer stationed to observe waters outside the shutdown zones but within the WRA. In addition, at least one marine mammal observer would be stationed on a vessel conducting acoustic monitoring outside the WRA, for as long as such monitoring is conducted but for a minimum of 30 days. The Navy estimates that representative acoustic sampling may occur in approximately 30 days. Based on our requirements, the Marine Mammal Monitoring Plan would include the following procedures for pile driving:

(1) MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.

(2) During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.

(3) If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible.

(4) The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between us and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. We require that, at a minimum, the following information be collected on the sighting forms:

(1) Date and time that pile driving begins or ends;

(2) Construction activities occurring during each observation period;

(3) Weather parameters identified in the acoustic monitoring (e.g., percent cover, visibility);

(4) Water conditions (e.g., sea state, tide state);

(5) Species, numbers, and, if possible, sex and age class of marine mammals;

(6) Marine mammal behavior patterns observed, including bearing and direction of travel, and if possible, the correlation to SPLs;

(7) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(8) Locations of all marine mammal observations; and

(9) Other human activity in the area.

Reporting

A draft report will be submitted within 90 days of the completion of the first 30 days of acoustic measurements and marine mammal monitoring. The report will also provide descriptions of any problems encountered in deploying sound attenuating devices and actions taken to solve these problems, any adverse responses to construction activities by marine mammals, and a complete description of all mitigation shutdowns and the results of those actions. A final report would be prepared and submitted within 30 days following resolution of comments on the draft report. Within 90 days of the end of the in-water work period, a draft comprehensive report on all marine mammal monitoring conducted under the IHA will be submitted to NMFS. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days. A final report will be prepared and submitted within 30 days following resolution of comments on the draft report. Required contents of the monitoring reports are described in more detail in the relevant plans.

Estimated Take by Incidental Harassment

With respect to the activities described here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. It is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures; however, implementation of these measures is expected to minimize the possibility of such takes to discountable levels.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. For example, during the past ten years, killer whales have been observed within the project area twice. On the basis of that information, an estimated amount of potential takes for killer whales is presented here. However, while a pod of killer whales could potentially visit again during the project timeframe, and thus be taken, it is more likely that they would not. Although incidental take of killer whales and Dall's porpoises was authorized for 2011 activities at NBKB on the basis of past observations of these species, no such takes were recorded and no individuals of these species were observed. Similarly, estimated actual take levels (observed takes extrapolated to the remainder of unobserved but ensonified area) were significantly less than authorized levels of take for the remaining species.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round

residents of Hood Canal and sea lions are known to haul-out on submarines and other man-made objects at the NBKB waterfront (although typically at a distance of a mile or greater from the project site). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy has requested authorization for the potential taking of small numbers of Steller sea lions, California sea lions, harbor seals, transient killer whales, Dall's porpoises, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the wharf construction project described previously in this document. The humpback whale is not expected to occur in the project area. The takes requested are expected to have no more than a minor effect on individual animals and no effect at the population level for these species. Any effects experienced by individual marine mammals are anticipated to be limited to short-term disturbance of normal behavior or temporary displacement of animals near the source of the sound.

Marine Mammal Densities

For all species, the best scientific information available was used to construct density estimates or estimate local abundance. Of available information deemed suitable for use, the data that produced the most conservative (i.e., highest) density or abundance estimate for each species was used. For harbor seals, this involved published literature describing harbor seal research conducted in Washington and Oregon as well as more specific counts conducted in Hood Canal (Huber *et al.,* 2001; Jeffries *et al.,* 2003). Killer whales are known from two periods of occurrence (2003 and 2005) and are not known to preferentially use any specific portion of the Hood Canal. Therefore, density was calculated as the maximum number of individuals present at a given time during those occurrences (London, 2006), divided by the area of Hood Canal. The best information available for the remaining species in Hood Canal came from surveys conducted by the Navy at the NBKB waterfront or in the vicinity of the project area. These consist of three discrete sets of survey effort, which were described in detail in the FR notice. Please see that document for an in-depth discussion (76 FR 79410; December 21, 2011).

The cetaceans, as well as the harbor seal, appear to range throughout Hood Canal; therefore, the analysis in this proposed IHA assumes that harbor seal, transient killer whale, harbor porpoise, and Dall's porpoise are uniformly distributed in the project area. However, it should be noted that there have been no observations of cetaceans within the WRA security barrier; the barrier thus appears to effectively prevent cetaceans from approaching the shutdown zones (please see Figure 2–2 of the Navy's application; the WRA security barrier, which is not denoted in the figure legend, is represented by a thin gray line and is roughly 500 m from the project site). Although the Navy will implement a precautionary shutdown zone for cetaceans, anecdotal evidence suggests that cetaceans are not at risk of Level A harassment at NBKB even from louder activities (e.g., impact pile driving). The remaining species that occur in the project area, Steller sea lion and California sea lion, do not appear to utilize most of Hood Canal. The sea lions appear to be attracted to the man-made haul-out opportunities along the NBKB waterfront while dispersing for foraging opportunities elsewhere in Hood Canal. California sea lions were not reported during aerial surveys of Hood Canal (Jeffries *et al.,* 2000), and Steller sea lions have only been documented at the NBKB waterfront.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Hood Canal. The methodology for estimating take was described in detail in the FR notice (76 FR 79410; December 21, 2011). The ZOI impact area is the estimated range of impact to the sound criteria. The distances specified in Table 2 were used to calculate ZOI around each pile. All impact pile driving take calculations were based on the estimated threshold ranges using a bubble curtain with 10 dB attenuation as a mitigation measure. The ZOI impact area took into consideration the possible affected area of the Hood Canal from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the canal. Because of the close proximity of some of the piles to the shore, the narrowness of the canal at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated. Although mean distances to thresholds as determined during acoustic monitoring in 2011 may differ somewhat—primarily in that the distances to the 120 dB threshold are likely to be much smaller for vibratory removal—we have maintained the take estimated based on predicted distances, as analyzed in the notice of proposed authorization. Therefore, these take estimates are likely to be conservative.

For sea lions, as described previously, the surveys offering the most conservative estimates of abundance do not have a defined survey area and so are not suitable for deriving a density construct. Instead, abundance is estimated on the basis of previously described opportunistic sighting information at the NBKB waterfront, and it is assumed that the total amount of animals known from NBKB haul-outs would be 'available' to be taken in a given pile driving day. Thus, for these two species, take is estimated by multiplying abundance by days of activity (195 days). While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving.

The exposure assessment methodology is an estimate of the numbers of individuals exposed to the effects of pile driving activities exceeding relevant thresholds. Of note in these exposure estimates, mitigation methods other than the use of a sound attenuation device (i.e., visual monitoring and the use of shutdown zones) were not quantified within the assessment and successful implementation of this mitigation is not reflected in exposure estimates. Results from acoustic impact exposure assessments should be regarded as conservative estimates.

Airborne Sound—No incidents of incidental take resulting solely from airborne sound are likely, as even the larger distances to the harassment thresholds seen in acoustic monitoring from 2011 would not reach any areas where pinnipeds may haul out (although predicted distances to the 90 dB threshold using proxy values would reach the nearest portion of the PSB). The shortest distance to the PSB (where harbor seals and the occasional California sea lion may haul-out) is approximately 180 m, but is generally greater than 500 m at the project site. Submarines docked at Delta Pier, where California and Steller sea lions are known to haul-out, are approximately 1.2 km from the project site. We recognize that it is possible that airborne sound could reach portions of the PSB where seals may haul-out, and that pinnipeds in the water could be

exposed to airborne sound that may result in behavioral harassment when looking with heads above water. However, these animals would previously have been 'taken' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, although we initially proposed the authorization of incidental take resulting from airborne sound for harbor seals, we no longer believe that such authorization is warranted.

The derivation of density or abundance estimates for each species, as well as further description of the rationale for each take estimate, was described in detail in the FR notice (76 FR 79410; December 21, 2011). Total take estimates, and numbers of take per species to be authorized, are presented in Table 4.

California Sea Lion

California sea lions are present in Hood Canal during much of the year with the exception of mid-June through August. California sea lions occur regularly in the vicinity of the project site from September through mid-June. With regard to the range of this species in Hood Canal and the project area, it is assumed on the basis of waterfront observations (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011) that the opportunity to haul out on submarines docked at Delta Pier is a primary attractant for California sea lions in Hood Canal, as they have rarely been reported, either hauled out or swimming, elsewhere in Hood Canal (Jeffries, 2007). Female California sea lions are rarely observed north of the California/Oregon border; therefore, only adult and sub-adult males are expected to be exposed to project impacts. The ZOI for vibratory pile driving encompasses areas where California sea lions are known to haul-out; assuming that 26 individuals could be taken per day of pile driving provides an estimate of 5,070 takes for that activity. Table 4 depicts the number of estimated behavioral harassments.

Steller Sea Lion

Steller sea lions were first documented at the NBKB waterfront in November 2008, while hauled out on submarines at Delta Pier (Bhuthimethee, 2008; Navy, 2010) and have been periodically observed since that time. Steller sea lions typically occur at NBKB from November through April; however, the first October sightings of Steller sea lions at NBKB occurred in 2011. Based on waterfront observations, Steller sea lions appear to use available haul-outs (typically in the vicinity of Delta Pier, approximately one mile south of the project area) and habitat similarly to California sea lions, although in lesser numbers. On occasions when Steller sea lions are observed, they typically occur in mixed groups with California sea lions also present, allowing observers to confirm their identifications based on discrepancies in size and other physical characteristics.

The time period from November through April coincides with the time when Steller sea lions are frequently observed in Puget Sound. Only adult and sub-adult males are likely to be present in the project area during this time; female Steller sea lions have not been observed in the project area. Since there are no known breeding rookeries in the vicinity of the project site, Steller sea lion pups are not expected to be present. By May, most Steller sea lions have left inland waters and returned to their rookeries to mate. Although sub-adult individuals (immature or pre-breeding animals) will occasionally remain in Puget Sound over the summer, observational data have indicated that Steller sea lions are present only from October through April and not during the summer months.

Steller sea lions are known only from haul-outs over one mile from the project area. The ZOI for vibratory pile driving encompasses areas where Steller sea lions are known to haul-out; assuming that one individual could be taken per day of pile driving provides an estimate of 195 takes, the level of take which was proposed for authorization (76 FR 79410; December 21, 2011). However, in consultation with the Navy, we now believe that the available abundance information does not necessarily reflect the nature of Steller sea lion occurrence at NBKB (i.e., the take estimation assumes that only one animal would be present per day). Actual observational data show that, while their occurrence is concentrated near Delta Pier, they occur in groups of one to four individuals. As a result, it is more likely that more than one exposure would occur in a day. In order to reflect this, we believe it warranted to authorize take at the level of two individuals per day of pile driving, for a total of 390 takes. Table 4 depicts the number of estimated behavioral harassments.

Harbor Seal

Harbor seals are the most abundant marine mammal in Hood Canal, and they can occur anywhere in Hood Canal waters year-round. During most of the year, all age and sex classes could occur in the project area throughout the period of construction activity. As there are no known regular pupping sites in the vicinity of the project area, harbor seal neonates are not expected to be present during pile driving. Otherwise, during most of the year, all age and sex classes could occur in the project area throughout the period of construction activity. Harbor seal numbers increase from January through April and then decrease from May through August as the harbor seals move to adjacent bays on the outer coast of Washington for the pupping season. The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at various river mouths, with the closest haul-out area to the project area being 10 mi (16 km) southwest of NBKB (London, 2006). Please see Figure 4–1 of the Navy's application for a map of haul-out locations in relation to the project area. Table 4 depicts the number of estimated behavioral harassments.

Humpback Whales

One humpback whale has recently been documented in Hood Canal. This individual was originally sighted on January 27, 2012 and was last reported on February 23, 2012, indicating that the animal has almost certainly left the area. Although known to be historically abundant in the inland waters of Washington, no other confirmed documentation of humpback whales in Hood Canal is available. Their presence has likely not occurred in several decades, with the last known reports being anecdotal accounts of three humpback sightings from 1972–82. We consider it extremely unlikely that any humpback whales would be present during the project timeframe. Therefore, the likelihood of incidental take of humpback whales is discountable and none is authorized.

Killer Whales

Transient killer whales are uncommon visitors to Hood Canal. Resident killer whales have not been observed in Hood Canal, but transient pods (six to eleven individuals per event) were observed in Hood Canal for lengthy periods of time (59–172 days) in 2003 (January–March) and 2005 (February–June), feeding on harbor seals (London, 2006). These whales used the entire expanse of Hood Canal for

feeding. Based on this data, the density for transient killer whales in the Hood Canal for January to June is 0.038/km² (eleven individuals divided by the area of the Hood Canal [291 km²]). Because the timeframe of known transient killer whale occurrence in Hood Canal only partially overlaps the construction period (January to mid-February), the days of total activity (or days of potential exposure) portion of the formula is reduced to 45 for killer whales. Table 4 depicts the number of estimated behavioral harassments.

Dall's Porpoise

Dall's porpoises may be present in the Hood Canal year-round and could occur as far south as the project site. Their use of inland Washington waters, however, is mostly limited to the Strait of Juan de Fuca. One individual has been observed by Navy staff in deeper waters of Hood Canal. Table 4 depicts the number of estimated behavioral harassments.

Harbor Porpoise

Harbor porpoises may be present in the Hood Canal year-round; their presence had previously been considered rare. During waterfront surveys of NBKB nearshore waters from 2008–10 only one harbor porpoise had been observed. However, during monitoring of Navy actions in 2011, several sightings indicated that their presence may be more frequent in deeper waters of Hood Canal than had been believed on the basis of existing survey data and anecdotal evidence. Subsequently, the Navy conducted dedicated vessel-based line transect surveys on days when no construction activity occurred (due to security, weather, etc.) and made regular observations of harbor porpoise groups. Please note that, due to the availability of corrected trackline distances for harbor porpoise surveys conducted in 2011, that density estimate has been revised from 0.250 animals/km² to 0.231 animals/km² for survey data through September 28, 2011.

Potential takes could occur if individuals of these species are present in the vicinity when pile driving is occurring. Individuals that are taken could exhibit behavioral changes such as increased swimming speeds, increased surfacing time, or decreased foraging. Most likely, individuals may move away from the sound source and be temporarily displaced from the areas of pile driving. Potential takes by disturbance would likely have a negligible short-term effect on individuals and not result in population-level impacts.

TABLE 4—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density/ abundance	Underwater		Airborne	Total proposed authorized takes
		Impact injury threshold [1]	Vibratory disturbance threshold (120 dB) [2]	Impact disturbance threshold [3]	
California sea lion	[4] 26.2	0	5,070	0	5,070
Steller sea lion	[4] 1.2	0	390	0	390
Harbor seal	1.31	0	10,530	0	10,530
Killer whale	0.038	0	90	N/A	90
Dall's porpoise	0.014	0	195	N/A	195
Harbor porpoise	0.231	0	1,950	N/A	1,950
Total	.....	0	18,225	0	18,225

[1] Acoustic injury threshold for impact pile driving is 190 dB for pinnipeds and 180 dB for cetaceans.

[2] The 160-dB acoustic harassment zone associated with impact pile driving would always be subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.

[3] Acoustic disturbance threshold is 100 dB for sea lions and 90 dB for harbor seals. We believe that any animal subject to levels of airborne sound that may result in harassment—whether hauled-out or in the water—would likely also be exposed to underwater sound above behavioral harassment thresholds within the same day. Therefore, no take authorization specific to airborne sound is warranted.

[4] Figures presented are abundance numbers, not density, and are calculated as the average of average daily maximum numbers per month. Abundance numbers are rounded to the nearest whole number for take estimation.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the proposed activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne or underwater sounds generated from pile driving. No mortality, serious injury, or Level A harassment is anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals and Level B harassment will be reduced to the level of least practicable adverse impact. Specifically, vibratory hammers, which do not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (less than 190 dB), will be the primary method of installation. Also, no impact pile driving will occur without the use of a sound attenuation system (e.g., bubble curtain), and pile driving will either not start or be halted if marine mammals approach the shutdown zone. The pile driving activities analyzed here are similar to other nearby construction activities within the Hood Canal, including two recent projects conducted by the Navy at the same location (test pile project and EHW–1 pile replacement project) as well as work conducted in 2005 for the Hood Canal Bridge (SR–104) by the Washington Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals.

The numbers of authorized take for Steller and California sea lions and for Dall's porpoises would be considered small relative to the relevant stocks or populations (each less than two percent) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. The proposed numbers of authorized take for harbor seals, transient killer whales, and harbor porpoises are somewhat higher relative to the total stocks. However, these numbers represent the instances of take, not the number of individuals taken. That is, it is likely that a relatively small subset of Hood Canal harbor seals, which is itself a small subset of the regional stock, would be harassed by project activities. While the available information and formula estimate that as many as 10,530 exposures of harbor seals to stimuli constituting Level B harassment could occur, that number represents some portion of the approximately 1,088 harbor seals resident in Hood Canal (approximately 7 percent of the regional stock) that could potentially be exposed to sound produced by pile driving activities on multiple days during the project. No rookeries are present in the project area, there are no haul-outs other than those provided opportunistically by man-made objects, and the project area is not known to provide foraging habitat of any special importance. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for Hood Canal harbor seals, and thus would not result in any adverse impact to the stock as a whole. Similarly, for killer whales, the estimated number of takes represents a single group of eleven whales that could potentially be exposed to sound on multiple days, if present. In fact, if a group of transient killer whales was present in the Hood Canal during the project (which is in itself unlikely, as such groups have appeared only twice since 2003), such a group would be able to simply leave the project area and forage elsewhere in Hood Canal or Puget Sound if the acoustic behavioral harassment caused by the project disturbed the group to a sufficient degree. However, it is difficult to quantify such a group's willingness to remain in the presence of behavioral harassment or, alternatively, to depart the project area. As such, NMFS proposes to authorize the take presented in Table 4, which represents the take of a single pod (approximately 11) that might be taken repeatedly over multiple days if they stayed in the area. The possible repeated exposure of a small group of individuals to levels associated with Level B harassment in this area is expected to have a negligible impact on the stock.

For harbor porpoises, the situation relative to the regional stock (where estimated take is approximately 18 percent) is less clear as little is known about their use of Hood Canal. Sightings information from opportunistic waterfront surveys as well as designed surveys of nearshore waters had previously indicated that harbor porpoises rarely occurred in NBKB waters. In addition, although no systematic survey work for harbor porpoises has occurred in Hood Canal, anecdotal evidence and expert opinion received through personal communication had confirmed that harbor porpoises were expected to occur infrequently and in low numbers in the project area. Recent Navy surveys have indicated that harbor porpoises are present in greater numbers than had been believed. It is unclear from the limited information available what relationship this occurrence, recorded only during the fall of 2011, may hold to the regional stock or whether similar usage of Hood Canal may be expected to recur throughout the project timeframe. Nevertheless, the estimated take of harbor porpoises is likely an overestimate (as it is based on information that may not hold true throughout the project timeframe) and should be considered to present a negligible impact on the stock. Harbor porpoise sightings to date have occurred only at significant distance from the project area (both inside and outside of the predicted 120-dB zone).

We have determined that the impact of the previously described wharf construction project may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No mortality or injuries are anticipated as a result of the specified activity, and none will be authorized. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. For pinnipeds, the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site means that potential takes by disturbance would have an insignificant short-term effect on individuals and will not result in population-level impacts. Similarly, for cetacean species the absence of any known regular occurrence adjacent to the project site means that potential takes by disturbance will have an insignificant short-term effect on individuals and will not result in population-level impacts. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

The negligible impact determination is also supported by the likelihood that, given sufficient ''notice'' through mitigation measures including soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious, and the likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Hood Canal, enabling the implementation of shutdowns to avoid injury, serious injury, or mortality. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and would be avoided through the incorporation of the described mitigation measures.

While the number of marine mammals potentially incidentally harassed would depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small relative to regional stock or population number, and will be mitigated to the lowest level practicable through incorporation of the mitigation and monitoring measures mentioned previously in this document. This activity is expected to result in a negligible impact on the affected species or stocks. The Eastern DPS of the Steller sea lion is listed as threatened under the ESA; no other species for which take authorization is requested are either ESA-listed or considered depleted under the MMPA.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that the wharf construction project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the activity will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

No tribal subsistence hunts are held in the vicinity of the project area; thus, temporary behavioral impacts to individual animals will not affect any subsistence activity. Further, no population or stock level impacts to marine mammals are anticipated or authorized. As a result, no impacts to the availability of the species or stock to the Pacific Northwest treaty tribes are expected as a result of the activities. Therefore, no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

There is one ESA-listed marine mammal species with known occurrence in the project area: The Eastern DPS of the Steller sea lion, listed as threatened. Because of the potential presence of Steller sea lions, the Navy engaged in a formal consultation with the NMFS Northwest Regional Office under Section 7 of the ESA. We also initiated separate consultation with our Northwest Regional Office because of our proposal to authorize the incidental take of Steller sea lions. The Biological Opinion associated with that consultation concluded that the proposed action is not likely to jeopardize the continued existence of the Steller sea lion or the humpback whale, and includes an Incidental Take Statement for the Steller sea lion. The Steller sea lion does not have critical habitat in the action area.

National Environmental Policy Act (NEPA)

The Navy has prepared an Environmental Impact Statement and issued a Record of Decision for this project. We acted as a cooperating agency in the preparation of that document, and have reviewed the EIS and the public comments received and determined that preparation of any additional NEPA analysis is not necessary. We subsequently adopted the Navy's EIS and issued our own Record of Decision. The Navy EIS is available for public review at *www.nbkeis.com.*

Authorization

As a result of these determinations, we have issued an IHA to the Navy to conduct the described activities in the Hood Canal from the period of July 16, 2012, through February 15, 2013, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 11, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–17488 Filed 7–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council (MFRC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Department of Defense Military Family Readiness Council (MFRC). The purpose of the Council meeting is to review the military family programs which will be the focus for the Council for next year, and address selected concerns of military family organizations.

The meeting is open to the public, subject to the availability of space. Persons desiring to attend may contact Ms. Melody McDonald at 571–372–0880 or email *FamilyReadinessCouncil@osd.mil* no later than 5:00 p.m. on Tuesday, August 7, 2012 to arrange for parking and escort into the conference room inside the Pentagon.

Interested persons may submit a written statement for consideration by the Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m. on Thursday, August 9, 2012.

DATES: August 15, 2012, 2:00 p.m. to 4:00 p.m.

ADDRESSES: Pentagon Conference Center B6 (escorts will be provided from the Pentagon Metro entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Telephones (571) 372–0880; (571) 372–0881 and/or email: *FamilyReadinessCouncil@osd.mil.*

SUPPLEMENTARY INFORMATION: Meeting agenda.

Wednesday, August 15, 2012

Welcome & Administrative Remarks
Review and Comment on Council Action from December meeting
Priority Areas Briefings
Closing Remarks

Note: Exact order may vary.

Dated: July 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–17458 Filed 7–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel will hold a regularly scheduled meeting. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, August 15, 2012 from 8:30 a.m. to 5:15 p.m. and Thursday, August 16, 2012 from 8:30 a.m. to 1:00 p.m. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington, DC 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Joan S. Cleveland, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4532.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–17438 Filed 7–17–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

National Petroleum Council

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, August 1, 2012, 9:00 a.m. to 11:30 a.m. (EST)

ADDRESSES: St. Regis Hotel, 923 16th and K Streets NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Oil and Natural Gas (FE–30), Washington, DC 20585; telephone (202) 586–5600 or facsimile (202) 586–6221.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, or the oil and natural gas industries.

Tentative Agenda:

- Call to Order and Introductory Remarks
- Consideration of the Proposed Final Report of the NPC Committee on Future Transportation Fuels
- Introductory Remarks by the Honorable Daniel B. Poneman, Deputy Secretary of Energy
- Remarks by the Honorable Steven Chu, Secretary of Energy
- Administrative Matters
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

Public Participation: The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Nancy Johnson at the address or telephone number listed above. Request for oral statements must be received at least three days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *info@npc.org.* Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Additionally, the meeting will also be available via live video webcast. The link will be available at *http://www.npc.org.*

Minutes: Transcripts of the meeting will be available by contacting Ms. Johnson at the address above, or *info@npc.org.*

Issued at Washington, DC, on July 11, 2012.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–17396 Filed 7–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Solicitation of Nominations for Appointment as a Member of the Biomass Research and Development Technical Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the U.S. Department of Energy is soliciting nominations for candidates to fill vacancies on the Biomass Research and Development Technical Advisory Committee (Technical Advisory Committee).

DATES: The deadline for nominations for members will be accepted on or before August 9, 2012.

ADDRESSES: The nominations must include name, a resume, biography, and any letters of support and are to be submitted via one of the following methods:

(1) Email to *elliott.levine@ee.doe.gov.*

(2) Overnight delivery service to: Elliott Levine, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–2E, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Elliott Levine, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–2E,1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1476; Email: *elliott.levine@ee.doe.gov.*

Committee's Web site: *http://biomassboard.gov/committee/committee.html.*

SUPPLEMENTARY INFORMATION: The Biomass Research and Development Act of 2000 (Biomass Act) [Pub. L. 106–224] requires cooperation and coordination in biomass research and development (R&D) between the U.S. Department of Agriculture (USDA) and U.S. Department of Energy (DOE). The Biomass Act was repealed and replaced in June 2008 by Section 9008 of the Food, Conservation and Energy Act of 2008 (FCEA) [Pub. L. 110–246, 122 Stat. 1651, enacted June 18, 2008, H.R. 6124].

FCEA section 9008(d) established the Biomass Research and Development Technical Advisory Committee and lays forth its meetings, coordination, duties, terms, and membership types. The Committee must meet quarterly and should not duplicate the efforts of other Federal advisory committees. Meetings are typically two days in duration. Three meetings are held in the Washington, DC area and the fourth is held at a site to be determined each year. Members of the Committee serve without compensation; however, each appointed member may be reimbursed for authorized travel and per diem expenses incurred while attending committee meetings, in accordance with Federal Travel Regulations.

The Committee advises the DOE and USDA points of contact with respect to the Biomass R&D Initiative (Initiative) and also makes written recommendations to the Biomass R&D Board (Board). Those recommendations regard whether: (A) Initiative funds are distributed and used consistent with Initiative objectives; (B) solicitations are open and competitive with awards made annually; (C) objectives and evaluation criteria of the solicitations are clear; and (D) the points of contact are funding proposals selected on the basis of merit, and determined by an independent panel of qualified peers.

The Committee members may serve up to two, three-year terms and must include: (A) An individual affiliated with the biofuels industry; (B) an individual affiliated with the biobased industrial and commercial products industry; (C) an individual affiliated with an institution of higher education that has expertise in biofuels and biobased products; (D) two prominent engineers or scientists from government or academia that have expertise in biofuels and biobased products; (E) an individual affiliated with a commodity trade association; (F) two individuals affiliated with environmental or conservation organizations; (G) an individual associated with State government who has expertise in biofuels and biobased products; (H) an individual with expertise in energy and environmental analysis; (I) an individual with expertise in the economics of biofuels and biobased products; (J) an individual with expertise in agricultural economics; (K) an individual with expertise in plant biology and biomass feedstock development; (L) an individual with

expertise in agronomy, crop science, or soil science; and (M) at the option of the points of contact, other members (REF: FCEA 2008 section 9008(d)(2)(A)). All nominees will be carefully reviewed for their expertise, leadership, and relevance to an expertise. Appointments will be made for three-year terms, as dictated by the legislation.

Nominations this year are being accepted for the following categories in order to address the Committee's needs: (D) Prominent engineers or scientist from government or academia that have expertise in biofuels and biobased products; (I) an individual with expertise in the economics of biofuels and biobased products; and (M) at the option of the points of contact, other members. Nominations for other categories will also be accepted. Nomination categories D, I, and M are considered special Government employees (SGEs) and require submittal of an annual financial disclosure form.

Nominations are solicited from organizations, associations, societies, councils, federations, groups, universities, and companies that represent a wide variety of biomass research and development interests throughout the country. Nominations for one individual that fits several of the categories listed above *or* for more than one person that fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must submit their resume and biography along with any letters of support by the deadline above. If you were nominated in previous years, but were not appointed to the committee and would still like to be considered, please submit your nomination package again in response to this notice with all required materials. All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. The DOE and USDA are committed to bringing greater diversity of thought, perspective and experience to its advisory committees. Nominees from all races, gender[s], age[s] and persons living with disabilities are encouraged to apply. Please note that registered lobbyists and individuals already serving another Federal Advisory Committee are ineligible for nomination.

Appointments to the Biomass Research and Development Technical Advisory Committee will be made by the Secretary of Energy and the Secretary of Agriculture.

Issued in Washington, DC, on July 11, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–17397 Filed 7–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–860–000.
Applicants: WBI Energy Transmission, Inc.
Description: Non-Conforming Negotiated Rate Agreements—Stateline to be effective 8/1/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5068.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: RP12–861–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—2012 Overrun and Penalty Revenue Distribution.
Filed Date: 7/11/12.
Accession Number: 20120711–5022.
Comments Due: 5 p.m. ET 7/23/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1957–005.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Pipeline Company, L.L.C. submits tariff filing per 154.203: Settlement Compliance to be effective 1/1/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5147.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: RP12–776–001.
Applicants: Midwestern Gas Transmission Company.
Description: Firm Park and Loan Service (FPAL) Compliance to be effective 7/1/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5047.
Comments Due: 5 p.m. ET 7/23/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 11, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–17425 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–85–000.
Applicants: Shiloh IV Wind Project, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Shiloh IV Wind Project, LLC.
Filed Date: 7/10/12.
Accession Number: 20120710–5150.
Comments Due: 5 p.m. ET 7/31/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1911–001.
Applicants: RE McKenzie 1 LLC.
Description: RE McKenzie 1 LLC submits tariff filing per 35.17(b): Amended Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5116.
Comments Due: 5 p.m. ET 7/31/12.

Docket Numbers: ER12–1912–001.
Applicants: RE McKenzie 2 LLC.
Description: Amended Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5126.
Comments Due: 5 p.m. ET 7/31/12.

Docket Numbers: ER12–1913–001.

Applicants: RE McKenzie 3 LLC.
Description: Amended Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5129.
Comments Due: 5 p.m. ET 7/31/12.
Docket Numbers: ER12–1915–001.
Applicants: RE McKenzie 4 LLC.
Description: Amended Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5131.
Comments Due: 5 p.m. ET 7/31/12.
Docket Numbers: ER12–1916–001.
Applicants: RE McKenzie 5 LLC.
Description: Amended Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5138.
Comments Due: 5 p.m. ET 7/31/12.
Docket Numbers: ER12–1917–001.
Applicants: RE McKenzie 6 LLC.
Description: Amended Application for Market-Based Rate Authority to be effective 7/31/2012 under ER12–1917 Filing Type: 120.
Filed Date: 7/10/12.
Accession Number: 20120710–5140.
Comments Due: 5 p.m. ET 7/31/12.
Docket Numbers: ER12–2085–001.
Applicants: PJM Interconnection, L.L.C.
Description: Errata to Amendments to OATT Sch 12–Appx re RTEP approved by PJM Board 5/17/2012 to be effective 9/19/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5144.
Comments Due: 5 p.m. ET 7/31/12.
Docket Numbers: ER12–2224–000.
Applicants: California Independent System Operator Corporation.
Description: CAISO's Amendment 6 to the PLA with CDWR to be effective 7/10/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5115.
Comments Due: 5 p.m. ET 7/31/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 11, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17429 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

Advisory Committee—July 18, 2012
Order 1000 Right of First Refusal Task Team—July 30, 2012
Order 1000 Right of First Refusal Task Team—July 31, 2012

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER12–1577–000, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–56, *FirstEnergy Service Company*
Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*
Docket No. EL12–24–000, *Pioneer Transmission LLC v. Midwest Independent Transmission System Operator, Inc.*
Docket No. EL12–28–000, *Xcel Energy Services Inc. v. American Transmission Company, LLC.*
Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: July 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17414 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–83–002]

Enogex LLC; Notice of Filing

Take notice that on July 9, 2012, Enogex LLC filed a refund report in accordance with an unpublished Delegated Letter Order dated May 4, 2012, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, July 20, 2012.

Dated: July 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17412 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2205–000]

Meadow Creek Project Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Meadow Creek Project Company LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17424 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2217–000]

Power Dave Fund LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Power Dave Fund LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17427 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2219–000]

W Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of W Power, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17428 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2215–000]

Spion Kop Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Spion Kop Wind, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17426 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–481–000]

Texas Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 2, 2012 Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP12–481–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act for authorization to replace and relocate approximately 9.3 miles of 12-inch diameter pipeline between mileposts 104.04 and 113.33 with approximately 11.9 miles of new 12-inch diameter pipeline from mileposts 104.04 to 115.92 located in Sullivan County, Indiana. This removal and relocation will allow Peabody Bear Run Mining, LLC to surface mine the area where the existing pipeline is located, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky, 42301, or call (270) 688–6825, or fax (270) 688–5871, or by email *Kathy.fort@bwpmlp.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: July 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17413 Filed 7–17–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0270; FRL–9520–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Petroleum Dry Cleaners (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 17, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0270, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0270, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Petroleum Dry Cleaners (Renewal).

ICR Numbers: EPA ICR Number 0997.10, OMB Control Number 2060–0079.

ICR Status: This ICR is scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for the Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ) were proposed on December 14, 1982, promulgated on September 21, 1984, and amended on October 17, 2000. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart JJJ.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 22 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of petroleum dry cleaners.

Estimated Number of Respondents: 20.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 1,849.

Estimated Total Annual Cost: $177,191, which includes $177,191 in labor costs exclusively, with no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in labor hours for both the respondents and the Agency in this ICR compared to the previous ICR. The adjustment increase is due to an increase in the number of new or modified sources. This increase is not due to any program changes. There is also an increase in the total labor and Agency costs as currently identified in the OMB Inventory of Approved Burdens. The change in cost estimates reflects the changes in respondent numbers (described above) and updated labors rates available from the Bureau of Labor Statistics.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17484 Filed 7–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0777; FRL–9520–5; EPA ICR No. 0575.13, OMB No. 2070–0004]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before August 17, 2012.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2011–0777 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail code: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 25, 2012 (77 FR 3766), EPA sought comments on this renewal pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2011–0777, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the Pollution Prevention and Toxics Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *www.regulations.gov*. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 8(d) of the Toxic Substances Control Act (TSCA) and 40 CFR part 716 require manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA uses information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 9.7 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.2.

Estimated No. of Respondents: 119.

Estimated Total Annual Burden on Respondents: 1,364 hours.

Estimated Total Annual Costs: $88,588.

Changes in Burden Estimates: This request reflects an increase of 908 hours (from 456 hours to 1,364 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase reflects EPA's revised estimate for the rate of chemical additions (from 20 to 70 chemicals per year) and to the episodic nature of rulemakings that add chemicals to the TSCA section 8(d) list. The Supporting Statement provides details about the change in burden estimate. The change is an adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17468 Filed 7–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2012–0547, FRL–9520–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations.gov Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew the following existing Information Collection Request (ICR): Regulations.gov Information Collection, OMB Control Number 2025–0008, EPA ICR Number 2357.04. Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 17, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2012–0547, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *brackett.shanita@epa.gov,* by mail to: EPA Docket Center, Environmental Protection Agency, mail code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, or by hand delivery: EPA Docket Center, EPA West Bldg, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation.

FOR FURTHER INFORMATION CONTACT: Shanita Brackett, OEI/OIC/CStD at the Environmental Protection Agency, 1200 Pennsylvania Ave. NW., (2822T), Washington, DC 20460; telephone number (202) 566–1008; fax number (202) 566–1008: email address: *brackett.shanita@epa.gov.*

SUPPLEMENTARY INFORMATION:

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) Enhance the quality, utility, and clarity of the information to be collected; and (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments. 1. Explain your views as clearly as possible and provide specific examples. 2. Describe any assumptions that you used. 3. Provide copies of any technical information and/or data you used that support your views. 4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide. 5. Offer alternative ways to improve the collection activity. 6. Make sure to submit your comments by the deadline identified under **DATES.** 7. To ensure proper receipt by EPA, be sure to identify the ICR title on the first page of your response. You may also provide the **Federal Register** citation.

What Information Collection Activity or ICR does this apply to?

Title: Regulations.gov Information Collection. *OMB Control Number:* 2025–0008.

Abstract: In response to the Presidential memorandum, the eRulemaking Program launched the *Regulations.gov* 'feedback exchange' Web site in May 2009. This interactive Web site showcases new technologies being considered for the *Regulations.gov* 'feedback exchange' and *Regulations.gov,* as well as other agency-specific initiatives and rulemaking activities. The 'feedback exchange' serves as a learning laboratory for open government, enabling the public to provide input on the *Regulations.gov* interface, build a community of practice on the Federal regulatory development process, and ensure that the eRulemaking Program can efficiently manage federal resources by testing new tools before they are launched. New technologies considered for the *Regulations.gov* 'feedback exchange' and *Regulations.gov* include: User Profiles; Comment Threads and Wikis; Ratings, Polls, and Tagging; an interactive Educational Tool; and Information Export and Sharing capabilities, such as application programming interfaces (or APIs). These technologies have been deployed iteratively, with some components deployed upon the site's original release in May 2009, and others deployed during updates throughout the last three years. Other components are still being considered and will be released during subsequent upgrades to the *Regulations.gov* 'feedback exchange' and *Regulations.gov.* User profiles enable the public to register on the site and pre-load submitter information for later use as well as save their own

personalized searches, RSS feeds, and email alerts without the use of persistent cookies. Comment Threads allow the public to enter into virtual conversations with one another about a topic. Wikis enable the public to collaboratively develop and modify narrative descriptions about a topic. Ratings and Polls allow the public to indicate a preference for a topic or issue via the selection of stars or thumbs up/thumbs down icons which graphically provide an at-a-glance indication of public sentiment and can simplify navigation. Tagging provides the public with the ability to tag or label information they or someone else has posted to the site to ease navigation and to promote the formation of common interest categories. The Educational Tool informs the public about the Federal rulemaking process through interactive text and images. The Data Export capability and APIs enable the public to download and review the contents of a rulemaking docket as well as mix and match such information with other information in new and innovative ways. The *Regulations.gov* ''feedback exchange'' relies on feedback from Government, Industry, Academia and Citizenry to improve *Regulations.gov* as time goes on.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Affected Entities: Anyone that chooses to visit Regulations.gov.

Estimated Total Number of Potential Respondents: 1,000.

Estimated Total Number of Potential Responses: 7,000.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 35 hours.

Estimated Total Annual Capital and Operations and Maintenance Costs: $30,000.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17486 Filed 7–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0699; FRL–9520–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment;* EPA ICR No. 1031.10, OMB No. 2070–0017. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before August 17, 2012.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2011–0699 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail code: 7408–M, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 25, 2011 (76 FR 66061), EPA sought comments on this renewal pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2011–0699, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in www.regulations.gov. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: TSCA section 8(c) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company. This ICR addresses the information reporting and recordkeeping requirements found in 40 CFR part 717.

Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between approximately 1 minute and 8 hours per response, depending upon the type(s) of activity that a respondent must complete. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 13,951.

Estimated Total Annual Burden on Respondents: 26,978 hours.

Estimated Total Annual Costs: $1,797,800.

Changes in Burden Estimates: This request reflects an increase of 3,442 hours (from 23,536 hours to 26,978 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase reflects EPA's estimate of a greater number of potential respondents affected by the reporting requirement. The Supporting Statement provides details about the change in burden estimate. The change is an adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17485 Filed 7–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0543; FRL–9355–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4 day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Pollinator Risk Assessment Framework.

DATES: The meeting will be held on September 11–14, 2012, from approximately 9 a.m. to 5:30 p.m.

Comments. The Agency encourages that written comments be submitted by August 28, 2012 and requests for oral comments be submitted by September 4, 2012. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after August 28, 2012 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before August 1, 2012.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0543 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Nominations, requests to present oral comments, and requests for special

accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3327; fax number: (202) 564–8382; email address: *jenkins.fred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2012–0543; in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than August 28, 2012, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after August 28, 2012 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than September 4, 2012, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.,* overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Terrestrial Community Ecology, Entomology (honeybee), Environmental Fate and Transport, Plant Physiology/Uptake, Residue Chemistry. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 1, 2012. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 8 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial

information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

This U.S. Environmental Protection Agency (EPA) FIFRA Scientific Advisory Panel (SAP) meeting will focus on a proposed tiered process for quantitatively evaluating the potential risk to pollinators (using honeybees (*Apis mellifera*) as surrogate) associated with the registered use of both systemic and non-systemic pesticides and the exposure and effects data needed to support that process. During this SAP, the EPA will provide an overview of the proposed tiered process for quantifying the potential risks of pesticides to honeybees. This overview will reflect collective efforts with Health Canada Pest Management Regulatory Agency (PMRA), and California Department of Pesticide Regulation (CalDPR). This will include an overview of the problem formulation step, where protection goals are defined, along with the conceptual model depicting potential routes of exposure and biological receptors ranging from the individual bee (larvae and adult) to the whole colony. Consistent with the risk assessment process for other taxa, the proposed process will consist of a screening-level tier based on conservative assumptions regarding exposure and laboratory-based measures of effect and extending to more refined estimates of risk based on field-based measures of exposure and effects that are more reflective of how the pesticide may act under actual use conditions. The proposed process is intended to enhance the ability of EPA, PMRA and CalDPR to reliably screen chemicals for direct and indirect effects, specifically on managed honeybee colonies, but EPA will also request advice from the SAP on the usefulness of this framework for characterizing potential effects on other, non-*Apis* pollinators.A number of sources have reported declines in certain pollinator species globally. Although a number of factors/agents have been hypothesized as potential contributors to declines in honey bee health in general, at this time, no factor has been identified as the single cause. Rather, the available science suggests that pollinator declines are a result of multiple factors which may be acting in various combinations. Research is being directed at identifying the individual and combinations of stressors that are most strongly associated with pollinator declines.

While the exact cause(s) of the general decline in pollinator species have not been determined, potential contributing factors including diseases, habitat destruction/urbanization, agricultural practices/monocultures, pesticides, nutrition, and bee management practices are among the factors being considered. Surveys of managed migratory bee colonies indicate that a broad range of pesticides have been detected in hive products (*e.g.,* honey, stored pollen, wax). Typically, pesticides occur in combination with other pesticides. In spite of the presence of these compounds in honeybee colonies, at this time, based on the available research there has been no correlation between pollinator declines in general and the use of any pesticide or class of pesticides.

Although, the role of pesticides in pollinator declines has not been well established, global experts from different disciplines (*e.g.,* chemistry, ecotoxicology and entomologists) and across various sectors (*e.g.,* government, academia and industry) agree on the need to advance the science to better assess potential exposure, hazard and risk to honey bees and other pollinators from pesticides used in agriculture. The proposed process which the SAP will be asked to consider reflects a synthesis of domestic and international efforts to develop a means for quantifying the potential effects of pesticides to bees.

Consistent with the current risk assessment paradigm used by EPA, CalDPR, PMRA and other regulatory authorities globally, the proposed selection of exposure and effects data follows a tiered approach intended to address specific assessment endpoints of growth, survival and reproduction. The decision criteria for transitioning to higher tier testing will also be delineated. The collective aim of the SAP will be to delineate a process for qualitatively and quantitatively assessing risks to honeybees and by extension to other insect pollinators for which honeybees serve as surrogates. The development of a risk assessment process for honeybees and identification of the data needed to inform that process relies on a clear articulation of the problem formulation and risk management goals.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by approximately mid to late August. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA

SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 10, 2012.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2012–17385 Filed 7–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9700–8]

Proposed CERCLA Administrative Cost Recovery Settlement; City of Middletown, CT and RLO Properties, Inc., Omo Manufacturing Site, Middletown, CT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: Notice is hereby given of a proposed administrative settlement for recovery of response costs under CERCLA, concerning the Omo Manufacturing Superfund Site in Middletown, Connecticut with the following settling parties: City of Middletown, Connecticut and RLO Properties, Inc. The settlement requires: (1) The City of Middletown, Connecticut to pay $2,800,000 to the Hazardous Substance Superfund in five equal payments, with interest, over time; and (2) RLO Properties, Inc. to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by RLO Properties, Inc. to which access is determined by EPA to be required for the implementation of the settlement.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. Section 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs under CERCLA Section 122(h)(1) and 104(e)(6), concerning the Omo Manufacturing Superfund Site in Middletown, Connecticut with the following settling parties: City of Middletown, Connecticut and RLO Properties, Inc. The settlement requires: (1) the City of Middletown, Connecticut to pay $2,800,000 to the Hazardous Substance Superfund in five equal payments, with interest, over time; and (2) RLO Properties, Inc. to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by RLO Properties, Inc. to which access is determined by EPA to be required for the implementation of the settlement. The settlement includes a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4). The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, MA 02109–3912.

DATES: Comments must be submitted by August 17, 2012 of this notice.

ADDRESSES: Comments should be addressed to Cynthia Lewis, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–3), Boston, MA 02109–3912 (Telephone No. 617–918–1889) and should refer to: In re: Omo Manufacturing Superfund Site, U.S. EPA Docket No. 01–2012–0040.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Cynthia Lewis, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–3), Boston, MA 02109–3912 (Telephone No. 617–918–1889); Email *lewis.cindy@epa.gov*).

Dated: June 26, 2012.

James T. Owens, III,

Director, Office of Site Remediation and Restoration, Region 1.

[FR Doc. 2012–17501 Filed 7–17–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012119–001.

Title: Maersk Line/CMA CGM TP5 Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Parties: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add China to the geographic scope, add language reflecting the fact that Maersk's TP5 service will be operated in cooperation with another carrier, and delete obsolete language.

Agreement No.: 012161–001.

Title: Siem Car Carrier Pacific AS/Hyundai Glovis Co., Ltd. Space Charter Agreement.

Parties: Siem Car Carrier Pacific AS; Hyundai Glovis Co., Ltd.

Filing Party: Ashley W. Craig; Venable LLP; 575 Seventh Street NW., Washington, DC 20004.

Synopsis: The amendment revises the geographic scope of the agreement to include Asia (including, but not limited to Korea, Japan, Philippines, Singapore, and China), and authorizes the mutual chartering of space between the parties.

Agreement No.: 012180.

Title: Maersk/MSC Vessel Sharing Agreement.

Parties: A.P. Moller Maersk A/S and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes the parties to share vessels in the trades between China, Korea, and Japan, and ports in California and Alaska.

Agreement No.: 201216.

Title: Port of Oakland Truck Tracking Program.

Parties: Port of Oakland; Eagle Marine Services; Ports America Outer Harbor Terminal, LLC; Seaside Transportation Services; SSA terminals, LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; and Trapac, Inc.

Filing Party: David F. Smith, Esq., Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement would provide for delivery of data to the Port of Oakland by the participating marine terminal operators, and various arrangements associated with that data delivery.

Agreement No.: 201217.

Title: Port of Long Beach Data Services Agreement.

Parties: Port of Long Beach; PierPass Inc.; Long Beach Container Terminal, Inc.; SSA Terminals, LLC; SSA Terminals (Long Beach), LLC; International Transportation Services, Inc.; Pacific Maritime Services, L.L.C.; and Total Terminals International, LLC.

Filing Party: David F. Smith, Esq., Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement would provide for delivery of data to the Port of Long Beach by the participating marine terminal operators and PierPass Inc., and various arrangements associated with that data delivery.

By Order of the Federal Maritime Commission.

Dated: July 13, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–17473 Filed 7–17–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

AG Technical Group, LLC (NVO & OFF), 10894 Stinson Drive, Dallas, TX 75217, Officer: Ephraim C. Eke, Managing Director (Qualifying Individual), Application Type: New NVO & OFF License.

Central Ohio Logistics Center, LLC (NVO), 11080 State Route 729, Jeffersonville, OH 43128, Officers: David A. McElwain, Manager (Qualifying Individual), David W. Martin, Manager, Application Type: New NVOCC License.

DEC Global Logistics Inc. (OFF), 3803 Cicada Lane, Houston, TX 77039, Officers: David Alfaro, Vice President (Qualifying Individual), Carlos E. Alfaro, President, Application Type: Name Change.

Roosevelt Elias dba E Global Shipping Line (NVO & OFF), 108 Inverness Drive, Montgomery, TX 77356, Officer: Roosevelt Elias, Sole Proprietor (Qualifying Individual), Application Type: New NVO & OFF License.

Garces & Garces Cargo Service, Inc. (NVO & OFF), 2605 NW 75th Street, Miami, FL 33122, Officers: Luis A. Gonzalez, Vice President (Qualifying Individual), Patricia Garces Ruiz, President, Application Type: New NVO & OFF License.

Innocent Peter Ajaroh dba Innglo Global (OFF), 2427 Texana Way, Richmond, TX 77406, Officer: Innocent Peter Ajaroh, Sole Proprietor (Qualifying Individual), Application Type: New OFF License.

Mega Shipping, Inc. (NVO & OFF), 9550 Flair Drive, #409, El Monte, CA 91731, Officer: Yuwei Chen, CEDO/Secretary/CFO (Qualifying Individual), Application Type: Add OFF Service.

Meiko America, Inc. (NVO & OFF), 19600 Magellan Drive, Torrance, CA 90502, Officers: Michael R. Sole, Vice President (Qualifying Individual), Kazuyoshi Ito, President/CFO, Application Type: Add NVO Service.

Nidsan Shipping Inc. (NVO), 167 Madison Avenue, Suite 500, New York, NY 10016, Officers: Liaquat U. Begum, President (Qualifying Individual), Aziz Unnisa, Vice President, Application Type: New NVO License.

Norman G. Jensen, Inc. dba Jensen Marine Services (NVO & OFF), 3050 Metro Drive, Suite 300, Minneapolis, MN 55425, Officers: Scott Brunclik, Assistant Vice President (Qualifying Individual), Gordon A. Jensen, President, Application Type: QI Change.

Novomarine Container Line LLC (NVO & OFF), 1647 Capesterre Drive, Orlando, FL 32824, Officer: Aleksey Y. Demshin, Managing Member (Qualifying Individual), Application Type: QI Change.

PNG Worldwide, LLC (NVO & OFF), 120 Church Road, Lititz, PA 17543, Officers: Michelle L. Bisesi, COO (Qualifying Individual), Patriciu N. Glavce, President/Owner/Member, Application Type: New NVO & OFF License.

Seaway Export, LLC (NVO & OFF), 175A Container Road, Savannah, GA 31415, Officer: Aleksey Anikin, Manager/President (Qualifying Individual), Application Type: New NVO & OFF License.

Sermar Enterprises, Inc. (OFF), 7001 NW 84th Avenue, Miami, FL 33166, Officer: Sergio Martinez, President/Secretary (Qualifying Individual), Application Type: New OFF License.

Dated: July 13, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–17474 Filed 7–17–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.	Name/address	Date reissued
003918F	Benison International Transportation, Inc., 9740 Jordon Circle, Suite #A, Santa Fe Springs, CA 90670.	June 5, 2012.
015101N	Northstar Shipping & Trading, Inc., 2855 Mangum Road, Suite 535, Houston, TX 77092.	May 23, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–17475 Filed 7–17–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the corresponding date shown below:

LICENSE NUMBER: 347F.
NAME: T.A. Provence and Company, Incorporated.
ADDRESS: 154 State Street, Mobile, AL 36603.
DATE REVOKED: June 30, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 011056NF.
NAME: EMO–Trans, Georgia, Inc.
ADDRESS: 20 Southwoods Parkway, Suite 500, Atlanta, GA 30354.
DATE REVOKED: May 17, 2012.
REASON: Voluntarily surrendered license.

LICENSE NUMBER: 13488N.
NAME: FCL/LCL International Inc.
ADDRESS: 150–14, 132nd Avenue, Jamaica, NY 11434.
DATE REVOKED: April 26, 2012.
REASON: Voluntarily surrendered license.

LICENSE NUMBER: 15187N.
NAME: Gage Shipping Lines, Ltd.
ADDRESS: 23 South Street, Baltimore, MD 21202.
DATE REVOKED: June 18, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 015941F.
NAME: Cargo Plus, Inc.
ADDRESS: 8333 Wessex Drive, Pennsauken, NJ 08109.
DATE REVOKED: June 23, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 017267N.
NAME: Just In Time Services, Inc.
ADDRESS: 11380 NW 34th Street, Suite 100, Doral, FL 33178.
DATE REVOKED: June 21, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 017754N.
NAME: Adcom Express, Inc. dba Adcom Worldwide.
ADDRESS: 7424 West 78th Street, Edina, MN 55439.
DATE REVOKED: June 24, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 019288N.
NAME: Kairos Logistics LLC.
ADDRESS: 13047 Artesia Blvd., Suite C–202, Cerritos, CA 90703.
DATE REVOKED: May 23, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 020717NF.
NAME: SS-World Enterprise, Inc. dba Smooth Shipping.
ADDRESS: 305 NW 24th Street, Grand Prairie, TX 75050.
DATE REVOKED: June 22, 2012.
REASON: Voluntarily surrendered license.

LICENSE NUMBER: 022228N.
NAME: Mota Import Export LLC dba MTI Mota Import Cargo Express.
ADDRESS: 175 Smith Street, Perth Amboy, NJ 08861.
DATE REVOKED: June 19, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 022597N.
NAME: Sky Express World Courier, Inc.
ADDRESS: 1740 S. Los Angeles Street, Suite 201, Los Angeles, CA 90015.
DATE REVOKED: June 14, 2012.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 023327N.
NAME: G & F West Indies Shipping, Inc.
ADDRESS: 1416 Blue Hill Avenue, Boston, MA 02126.
DATE REVOKED: June 26, 2012.
REASON: Failed to maintain a valid bond.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–17476 Filed 7–17–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Zahid Aslam, Elkton, Maryland; Michael Khatiwala, Voorhees, New Jersey; Michael Knapp, Lincoln University, Pennsylvania; Nalin Patel and Arpan Patel, both of Newtown, Pennsylvania; and Raj Parikh, Monroe, New Jersey,* as a group acting in concert, to acquire voting shares of Rising Sun Bancorp, and thereby indirectly acquire voting shares of NBRS Financial Bank, both in Rising Sun, Maryland.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Timothy James McMahon,* Poulsbo, Washington; to acquire additional voting shares of Prime Pacific Financial Services, Inc., and thereby indirectly acquire additional voting shares of Prime Pacific Bank, National Association, both in Lynnwood, Washington.

Board of Governors of the Federal Reserve System, July 13, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–17480 Filed 7–17–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Trustmark Corporation,* Jackson, Mississippi; to merge with BancTrust Financial Group, Inc., and thereby indirectly acquire BankTrust, both in Mobile, Alabama.

Board of Governors of the Federal Reserve System, July 13, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–17479 Filed 7–17–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meetings

TIME AND DATE: July 23, 2012, 9:00 a.m. (Eastern Time).

PLACE: 10th Floor Training Room, 77 K Street, NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the June 25, 2012 Board Member Meeting.
2. Thrift Savings Plan Activity Report by the Executive Director.
a. Monthly Participant Activity Report.
b. Legislative Report.
3. Quarterly Reports.
a. Investment Policy Report.
b. Vendor Financial Status Report.
4. Risk Management Overview.
5. Benefits Overview.
6. Contract Selection Criteria Review.
7. 2013 Board Meeting Calendar.

Parts Closed to the Public

8. Procurement.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: July 16, 2012.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–17624 Filed 7–16–12; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recharter of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services announces the recharter of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health.

FOR FURTHER INFORMATION CONTACT: Corinne Graffunder, Designated Federal Officer (DFO) of the Advisory Group, Office of the Associate Director for Policy; Centers for Disease Control and Prevention; 1600 Clifton Road, NE., MS D–28; Atlanta, GA 30329; Telephone: (404) 639–7514; and/or the following person may be contacted: Olga Nelson, Committee Management Officer, Office of the Assistant Secretary for Health; Department of Health and Human Services; 200 Independence Avenue SW., Room 714B; Washington, DC 20201; Telephone: (202) 690–5205; Fax: (202) 401–2222.

SUPPLEMENTARY INFORMATION: The President issued Executive Order 13544, dated June 10, 2010, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. This legislation mandated that the President establish the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the ''Advisory Group'') within the Department of Health and Human Services. To comply with the authorizing legislation and directive and guidelines under the FACA, the charter to establish the Advisory Group was appropriately filed on June 24, 2010. The Advisory Group was established as a non-discretionary federal advisory committee.

Under FACA, it is stipulated that the charter for a federal advisory committee must be renewed every two years in order for the committee to continue to operate. Since the Advisory Group was established by Presidential directive, appropriate action had to be taken by the President or agency head to authorize continuation of the Advisory Group. On November 23, 2011, the President issued Executive Order 13591. This directive gives authorization for the Advisory Group to continue to operate until September 30, 2012.

Objectives and Scope of Activities. The Advisory Group provides recommendations and advice to the National Prevention, Health Promotion, and Public Health Council (hereafter referred to as the ''Council''). The Advisory Group provides assistance to the Council in carrying out its mission. The Advisory Group develops policy and program recommendations and advises the Council on lifestyle-based chronic disease prevention and management, integrative health care practices, and health promotion.

Membership and Designation. The Advisory Group is authorized to consist of not more than 25 non-federal members, who are appointed by the President. In appointing members, the President is to ensure that the Advisory Group includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine. The Advisory Group currently has 22 members.

The Advisory Group reports to the Surgeon General. The Surgeon General is to select one of the appointed members to serve as Chair of the Advisory Group. Jeffrey Levi, Ph.D., Executive Director of Trust for America's Health, was selected by the Surgeon General to serve as Chair of the Advisory Group. Mr. Levi has occupied this leadership position since the Advisory Group was established. The non-federal members of the Advisory Group shall be classified as special government employees (SGEs).

Administrative Management and Support. HHS provides funding and administrative support for the Advisory Group to the extent permitted by law within existing appropriations. Staff within Office of the Assistant Secretary for Health (OASH) provide management and oversight for support services provided to the Advisory Group. OASH is a staff division within Office of the Secretary, HHS.

One amendment was proposed and approved for the charter. The area of consideration from which the DFO can be selected has been expanded. A copy of the charter and information on activities and accomplishments of the

Advisory Group can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The Web site for the FACA database is *http://fido.gov/facadatabase/.*

Authority: Executive Order 13544, dated June 10, 2010, as statutorily mandated under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148, dated March 23, 2010. Authority to continue the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (hereafter referred to as the ''Advisory Group'') is given under Executive Order 13591, dated November 23, 2011. The Advisory Group on Prevention, Health Promotion, and Integrative and Public Health is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

Dated: July 13, 2012.

Regina Benjamin,

VADM, USPHS, Surgeon General.

[FR Doc. 2012–17445 Filed 7–17–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–0556]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Assisted Reproductive Technology (ART) Program Reporting System (0920–0556, exp. 9/30/2012)—Revision—National Center for Chronic Disease and Public Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The ART program reporting system is used to comply with Section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA)), 42 U.S.C. 263a–1(a)). FCSRCA requires each ART program to annually report to the Secretary through the CDC pregnancy success rates achieved by each ART program, the identity of each embryo laboratory used by such ART program, and whether the laboratory is certified or has applied for certification under the Act. The reporting system allows CDC to publish an annual success rate report to Congress as specified by the FCSRCA.

CDC requests OMB approval to continue information collection for three years. This Revision request includes an increase in the total estimated burden hours due to an increase in the estimated number of responding clinics and an increase in the estimated number of responses per respondent. In addition, this Revision request describes implementation of a brief, one-time optional feedback survey at the end of the data submission for each reporting year. The feedback survey will elicit information about ART reporting system usability as well as respondents' perspectives on the usefulness of the information collection.

Information is collected electronically through the National ART Surveillance System (NASS), a web-based interface, or by electronic submission of NASS-compatible files. The NASS includes information about all ART cycles initiated by any of the ART programs practicing in the United States and its territories. The system also collects information about the pregnancy outcome of each cycle as well as a number of data items deemed important to explain variability in success rates across ART programs and individuals.

Respondents are the 484 ART programs in the United States. Approximately 440 ART programs are expected to report an average of 339 ART cycles each. The burden estimate includes the time for collecting, validating, and reporting the requested information. Information is collected on an annual schedule.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 96,960.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
ART Programs	NASS	440	339	39/60
	Feedback Survey	176	1	2/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–17459 Filed 7–17–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0835]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, at CDC, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Assessing the Safety Culture of Underground Coal Mining (0920–0835 Expiration 12/31/2012)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

This research relates to occupational safety and health problems in the coal mining industry. In recent years, coal mining safety has attained national attention due to highly publicized disasters. Despite these threats to worker safety and health, the U.S. relies on coal mining to meet its electricity needs. For this reason, the coal mining industry must continue to find ways to protect its workers while maintaining productivity. One way to do so is through improving the safety culture at coal mines. In order to achieve this culture, operators, employees, the inspectorate, etc. must share a fundamental commitment to it as a value. This type of culture is known in other industries as a ''safety culture.'' Safety culture can be defined as the characteristics of the work environment, such as the norms, rules, and common understandings that influence employees' perceptions of the importance that the organization places on safety.

NIOSH requests OMB approval to collect safety culture data from underground coal mine employees over a three-year period to continue the assessment of the current safety culture of underground coal mining in order to identify recommendations for promoting and ensuring the existence of a positive safety culture across the industry. Up to four underground coal mines will be studied for this assessment in an attempt to study mines of different characteristics. Small, medium, and large unionized as well as nonunionized mines will be recruited to diversify the research sample. Data will be collected one time at each mine; this is not a longitudinal study. The assessment includes the collection of data using several diagnostic tools: functional analysis, structured interviews, behavioral observations, and surveys.

It is estimated that across the four mines, approximately 1,144 respondents will be surveyed. The exact number of interviews conducted will be based upon the number of individuals in the mine populations, but it is estimated that, across the four mines, approximately 201 interviews will be conducted. An exact number of participants is unavailable at this time because not all mine sites have been selected.

The use of multiple methods to assess safety culture is a key aspect to the methodology. After all of the information has been gathered, a variety of statistical and qualitative analyses are conducted on the data to obtain conclusions with respect to the mine's safety culture. The results from these analyses will be presented in a report describing the status of the behaviors important to safety culture at that mine.

Data collection for this project had previously taken place between the dates of January 1, 2010 and May 1, 2012. During this time period, safety culture assessments were conducted at five underground coal mines, including one small, two medium, and two large mines located in the Northern Appalachian, Central Appalachian, Southern Appalachian, and Western coal regions. One of the assessments was conducted at a unionized mine and the four other assessments were conducted at non-union mines. Data were collected from 274 interview participants and 1,356 survey respondents.

From this previous data collection, some trends are beginning to emerge. These include safety culture characteristic differences depending on the size of the mine and also differences between union and non-union mines. However, the sample of participating mines from the previous data collection is not sufficient for conclusions to be drawn regarding these emerging trends. Therefore, the continuation of data collection is needed in order to include additional union mines and small mines into the study sample.

Upon completion, this project will provide recommendations for the enactment of new safety practices or the enhancement of existing safety practices across the underground coal mining industry. This final report will present a generalized model of a positive safety culture for underground coal mines that can be applied at individual mines. In addition, all study measures and procedures will be available for mines to use in the future to evaluate their own safety cultures. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Underground Coal Mine Employees	Safety Culture Survey	1144	1	20/60	381
	Behavioral Anchored Rating Scale Interview.	201	1	1	201
Total					582

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–17456 Filed 7–17–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–643 and CMS–10185]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection. *Title of Information Collection:* Hospice Survey and Deficiencies Report Form and Supporting Regulations. *Use:* CMS uses the information collected as the basis for certification decisions for hospices that wish to obtain or retain participation in the Medicare and Medicaid programs. The information is used by CMS regional offices, which have the delegated authority to certify Medicare facilities for participation, and by State Medicaid agencies, which have comparable authority under Medicaid. The information on the Hospice Survey and Deficiencies Report Form is coded for entry into the OSCAR system. The data is analyzed by the CMS regional offices and by the CMS central office components for program evaluation and monitoring purposes. The information is also available to the public upon request. *Form Number:* CMS–643 (OCN 0938–0379). *Frequency:* Yearly. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 3,644. *Total Annual Responses:* 1,217. *Total Annual Hours:* 1,217. (For policy questions regarding this collection contact Kim Roche at 410–786–3524. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Medicare Part D Reporting Requirements and Supporting Regulations; *Use:* Title I of 42 CFR, Part 423, § 423.514, requires each Part D Sponsor to have an effective procedure to provide statistics indicating: the cost of its operations, the patterns of utilization of its services, the availability, accessibility, and acceptability of its services, information demonstrating it has a fiscally sound operation and other matters as required by CMS. In addition, § 423.505 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA), establishes as a contract provision that Part D Sponsors must comply with the reporting requirements for submitting drug claims and related information to CMS. Data collected via Medicare Part D Reporting Requirements is an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries. The data collected will be validated, analyzed, and utilized for trend reporting.

The revisions for the CY 2013 include the removal, addition or both of data elements for the Prompt Payment by Part D Sponsors, Grievances, Fraud, Waste, and Abuse Compliance Programs, and Plan Oversight of Agents reporting sections; however, these changes resulted in no changes to the burden for these sections. In addition, we added data elements and revised data elements for the Medication Therapy Management Programs and the Coverage Determinations and Exceptions reporting sections, which resulted in an increase in burden hours for both sections. Lastly, we removed the following reporting sections and decreased burden estimates associated with these sections because these data are no longer necessary for monitoring through these reporting requirements: Access to Extended Day Supplies at Retail Pharmacies; and Pharmacy Support of E-prescribing. *Form Number:* CMS–10185 (OMB#: 0938–0992); *Frequency:* Yearly, Quarterly, Semi-Annually; *Affected Public:* Private Sector, business or other for-profit; *Number of Respondents:* 3,180; Total *Annual Responses:* 48,152; *Total Annual Hours:* 76,240. (For policy questions regarding this collection contact LaToyia Grant at 410–786–5434. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *August 17, 2012.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: July 12, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–17380 Filed 7–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–2567]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper

performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection. *Title of Information Collection:* Deficiencies and Plan of Correction (CMS–2567) and Supporting Regulations contained in 42 CFR 488.18, 488.26, and 488.28. *Use:* Section 1864(a) of the Social Security Act requires that the Secretary use State survey agencies to conduct surveys to determine whether health care facilities meet Medicare and Clinical Laboratory Improvement Amendments participation requirements. The CMS–2567 form is the means by which the survey findings are documented. This section of the law further requires that compliance findings resulting from these surveys be made available to the public within 90 days of such surveys. The CMS–2567 from is the vehicle for this disclosure. The regulations at 42 CFR 488.18 require that State survey agencies document all deficiency findings on a statement of deficiencies and plan of correction, which is the CMS–2567. 42 CFR 488.26 and 488.28 further delineate how compliance findings must be recorded and that CMS prescribed forms must be used.

The form is also used by health care facilities to document their plan of correction and by CMS, the States, facilities, purchasers, consumers, advocacy groups, and the public as a source of information about quality of care and facility compliance.

Form Number: CMS–2567 (OCN 0938–0391). *Frequency:* Yearly and occasionally. *Affected Public:* Private Sector (Business or other for-profit and not-for-profit institutions). *Number of Respondents:* 62,000. *Total Annual Responses:* 62,000. *Total Annual Hours:* 134,540. (For policy questions regarding this collection contact Angela Mason-Elbert at 410–786–8279. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 17, 2012.*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 12, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–17378 Filed 7–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0011]

Establish a Patient-Based Registry To Evaluate the Association of Gadolinium Based Contrast Agents Exposure and Nephrogenic Systemic Fibrosis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the development of a patient-based registry to evaluate the association of gadolinium based contrast agents (GBCAs) exposure and nephrogenic systemic fibrosis (NSF). The goal of the GBCA project is to study the safety of the GBCAs when used as indicated.

DATES: Important dates are as follows:

1. The application due date is August 1, 2012.
2. The anticipated start date is September 13, 2012.
3. The opening date is July 2, 2012.
4. The expiration date is August, 2, 2012.

ADDRESSES: Submit the paper application to: Vieda Hubbard, Grants Management (HFA–500), 5630 Fishers Lane, Rockville, MD 20857, and a copy to Ira Krefting, Center for Drug Evaluation and Research, Division of Medical Imaging Products, 10903 New Hampshire Ave., Bldg. 22, rm. 2100, Silver Spring, MD 20993. For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT: Ira Krefting, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2100, Silver Spring, MD 20993, 301–796–1135, Email: *ira.krefting@fda.hhs.gov;* or

Vieda Hubbard, Office of Acquisitions and Grants Services (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2034, Rockville, MD 20857, 301–827–7177, Email: *vieda.hubbard@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at: *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/UCM311309.pdf.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–12–029
93.103

A. Background

Annually, millions of patients undergo magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA) procedures employing GBCAs. Postmarketing data indicate that six of the eight GBCAs approved for use in the United States have been directly implicated in the development of NSF, a newly characterized, potentially fatal systemic fibrotic skin and internal organ condition. Among the factors that may increase the risk for NSF are repeated or higher than recommended doses of GBCA and degree of renal impairment at the time of exposure; imaging patients with severe renal failure appear to be at highest risk. In one, early retrospective study of 370 patients with severe renal failure who received gadodiamide the estimated risk for development of NSF was 4 percent (Ref. 1). In a recent retrospective chart review study by Wang of 52,954 contrast MR examinations with restrictive guidelines for GBCA in patients with renal failure no new cases of NSF were found (Ref. 2).

In addition, the NSF risk appears to vary among the GBCAs. Postmarketing data and corroborating preclinical data that demonstrated a significant, unacceptable NSF risk has led FDA to recently contraindicate Omniscan, Magnevist, and Optimark for patients with acute kidney injury and severe chronic renal failure. The risk of NSF associated with the remaining marketed GBCAs for patients with these kidney conditions is expected to be lower, but is not fully understood. Therefore, there is a public health need to study the risk of NSF associated with the exposure of those remaining marketed GBCAs and to inform the development of reliable knowledge, practice guidelines, and regulatory processes in relationship to the safety of these agents.

B. Research Objectives

The primary goal of this project is to employ an existing Quality Assurance (QA) registry of patients with renal failure who received GBCAs as the basis for a prospective registry study of the risk of NSF associated with GBCAs among renal patients. Patients already enrolled in this QA registry will be invited to enroll in an outpatient registry to study their risk of NSF. Data from this project will help understand the effect of cumulative dosing of the GBCAs in patients with slow deterioration of renal function as occurs with aging, and the data might also provide further reassurance as to the safety of the GBCAs identified as having minimal association with the risk of NSF by prospectively following patients who have received GBCAs. In addition, the project will also provide data on the occurrence of allergic reactions associated with the GBCA administration. A recent report by Prince suggests an increased risk of allergic reactions with MultiHance (Ref. 3).

The prospective design of this project is important since most previous clinical investigations have been based on chart review or other retrospective data. Implementation of this project may also provide the structure for future prospective investigations of other diseases with an acute phase of hospitalization superimposed on a chronic course.

C. Eligibility Information

This is a sole source cooperative agreement to: University of Pittsburg Medical Center.

II. Award Information/Funds Available

A. Award Amount

CDER anticipates providing in FY2012 $250,000 (total costs include direct and indirect costs), for one award subject to availability of funds in support of this project.

B. Length of Support

Support will be 1 year with the possibility of an additional year of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a noncompeting continuation application and subject to the availability of Fiscal Year appropriations.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at: *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/UCM311309.pdf.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application at: *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/UCM311309.pdf.* For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number.
- Step 2: Register With Central Contractor Registration.
- Step 3: Register With Electronic Research Administration (eRA) Commons Steps 1 and 2, in detail, can be found at: *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at: *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit one paper application to: Vieda Hubbard, Grants Management, Food and Drug Administration, Division of Support and Grants, 5630 Fishers Lane, rm. 1079, HFA 500, Rockville, MD 20857 and a copy to Ira Krefting, Center for Drug Evaluation and Research, Division of Medical Imaging Products, 10903 New Hampshire Ave. Bldg. 22, Rm. 2100, Silver Spring, MD 20993.

IV. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Marckmann, Peter; Skov, Lone; Rossen, Kristian; Dupont, Anders; Damholt, Mette Brimnes; Heaf, James Goya; and Thomsen, Henrik, *Journal of the American Society of Nephrology,* 17:2359, 2006.

2. Wang, Yingbing; Alkasab, Tarik; Narin, Ozden; Nazarian, Rosalynn; Kaewali, Rathachai, Kaewlai; Kay, Jonathan; and Abujudeh, Hani, *Radiology,* 260:105, 2011.

3. Prince, Martin; Zhang, Honglei; Zou, Zhitong; Staron, Ronald; and Brill, Paula, *American Journal of Radiology,* 196(2):W138, 2011.

Dated: July 13, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17454 Filed 7–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 21, 2012 from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: Sara J. Anderson, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg 66, rm. 1611, Silver Spring, MD 20993–0002, 301 796–7047, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA

advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On September 21, 2012, the committee will discuss and make recommendations regarding the classification of posterior cervical screws, including pedicle and lateral mass screws. Cervical pedicle and lateral mass screws are components of rigid, posterior spinal screw and rod systems generally intended as an adjunct to fusion for the treatment of degenerative disc disease (as defined by neck pain confirmed by radiographic studies), trauma, deformity, failed previous fusion, tumor, infection, and inflammatory disorders in the cervical spine.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 14, 2012. Oral presentations from the public will be scheduled between approximately 12:15 p.m. and 1:15 p.m. on September 21, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 6, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 7, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark at *James.Clark@fda.hhs.gov* or 301–796–5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 12, 2012.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–17431 Filed 7–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 19, 2012, between approximately 8 a.m. and 4 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

For those unable to attend in person, the meeting will also be Web cast. The link for the Web cast is available at: *https://collaboration.fda.gov/vrbpac/.*

Contact Person: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On September 19, 2012, the committee will meet in open session to discuss consideration of the appropriateness of cell lines derived from human tumors for vaccine manufacture.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 12, 2012. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 4, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 5, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 13, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–17482 Filed 7–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Bioengineering Sciences and Technology.

Date: August 10, 2012.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2012 .

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17465 Filed 7–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Studies of Molecular, Genomics and Regulation of Gene Expression Area Grant Applications.

Date: July 30, 2012.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David J Remondini, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17467 Filed 7–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Behavioral and Social HIV/AIDS Grant Applications.

Date: August 6, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Small Business: HIV/AIDS Innovative Research Applications.

Date: August 9, 2012.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting),

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17466 Filed 7–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0231]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0046, Certificates of Financial Responsibility under the Oil Pollution Act of 1990. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before August 17, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0231] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov*.

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST SW., STOP 7101, WASHINGTON DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0231], and must be received by August 17, 2012. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0231], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be

considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0231'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0231'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0046.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 27472, May 10, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests.

Title: Certificates of Financial Responsibility under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0046.

Type of Request: Extension of a currently approved collection.

Respondents: Vessel operators and approved insurers.

Abstract: The information collection requirements described in this supporting statement are necessary to provide evidence of a respondent's ability to pay for removal costs and damages associated with discharges or substantial threats of discharges of hazardous material or oil into the navigable waters, adjoining shorelines or the exclusive economic zone of the United States. The requirements are imposed generally on operators and financial guarantors of vessels over 300 gross tons.

Forms: CG–5585, CG–5586–1, –2, –3, –4.

Burden Estimate: The estimated burden remains 3,400 hours a year.

Dated: July 11, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–17408 Filed 7–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection; File No. I–243; Application for Removal; OMB Control No. 1615–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 17, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until September 17, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–243); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: July 11, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–17423 Filed 7–17–12; 8:45 am]

BILLING CODE 9111– 28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–09]

Notice of Proposed Information Collection for Public Comment; Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information and collection requirements consist of PHA screening requirements to obtain criminal conviction records from law enforcement agencies to prevent admission of criminals into the public housing and Section 8 programs and to assist in lease enforcement and eviction of those individuals in the public housing and Section 8 programs who engage in criminal activity.

DATES: *Comment Due Date:* September 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Screening and Eviction for Drug Abuse and Other Criminal Activity.

OMB Approval Number: 2577–0232.

Description of the Need for the Information and Its Proposed Use: The information and collection requirements consist of PHA screening requirements to obtain criminal conviction records from law enforcement agencies to prevent admission of criminals into the public housing and Section 8 programs and to assist in lease enforcement and eviction of those individuals in the public housing and Section 8 programs who engage in criminal activity. The reason for the current revision is that the 2009 submission only included the burden hours for Public Housing participants. Because the screening is done for residents in the Public Housing and Section 8 program, the calculations were updated to reflect this reality. The current calculations use the existing formula for burden hours but include voucher residents.

Agency form number, if applicable: None.

Members of affected public: State or Local Government; Public Housing Agencies (PHAs), Individuals or Households.

Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Total Public Housing Burden Hours for screening & eviction (709,585 hours) + Total Voucher Burden Hours for screening & eviction of Voucher participants (1,409,229 hours) = 2,118,814.

Status of the Proposed Information Collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 13, 2012.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–17494 Filed 7–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–10]

Notice of Proposed Information Collection for Public Comment; Public Housing Agency (PHA) Lease and Grievance Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Public Housing lease and grievance procedures are a

recordkeeping requirement on the part of Public Housing agencies (PHAs) as they are required to enter into and maintain lease agreements for each individual or family that occupies a Public Housing unit. Also, both PHAs and tenants are required to follow the protocols set forth in the grievance procedures for both an informal and formal grievance hearing.

DATES: *Comment Due Date:* September 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov*. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Lease and Grievance Requirements.

OMB Approval Number: 2577–0006.

Description of the Need for the Information and Its Proposed Use: The Public Housing lease and grievance procedures are a recordkeeping requirement on the part of Public Housing agencies (PHAs) as they are required to enter into and maintain lease agreements for each individual or family that occupies a Public Housing unit. Also, both PHAs and tenants are required to follow the protocols set forth in the grievance procedures for both an informal and formal grievance hearing. The current revision was needed to correct errors in the 2009 calculation. The earlier calculation had over the amount of time needed to complete the form. The previous submission incorrectly included the number of responding PHAs in the calculation and also incorrectly assumed that 100% of households would be reviewing or initiating a lease. The correction of the errors brought the number of burden hours down from 5,671,800 to 339,822.

Agency form number, if applicable: None.

Members of Affected Public: Public housing applicants and households.

Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of respondents: 3,144. The respondents collect information for 1,181,986 households. The calculation for burden hours is as follows: Calculation for number of respondents: 1,181,986 × 1.15 (median number of new leases + changes + grievances) × 15 minutes (.25 of an hour, median time to complete) = 339,822 total hours.

Status of the Proposed Information Collection: Revision.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 13, 2012.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–17496 Filed 7–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–49]

Notice of Submission of Proposed Information Collection to OMB; FY 13 Transformative Initiative Sustainable Communities Research Grant Program (SCRGP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of the FY13 Sustainable Communities Grant Program (SCRGP) is to offer researchers the opportunity to submit grant applications to fund quality research under the broad subject area of sustainability. HUD is primarily interested in funding cutting edge research in the areas of equitable affordable housing development, transportation and infrastructure financing, and energy and ''green'' building practices.

DATES: *Comments Due Date:* August 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0264) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FY 13 Transformative Initiative Sustainable Communities Research Grant Program (SCRGP).

OMB Approval Number: 2528–0264.

Form Numbers: SF–424supp, 424cb, SFLLL, SF–424, 2880.

Description of the Need for the Information and its Proposed

The purpose of the FY13 Sustainable Communities Grant Program (SCRGP) is to offer researchers the opportunity to submit grant applications to fund quality research under the broad subject area of sustainability. HUD is primarily interested in funding cutting edge research in the areas of equitable affordable housing development, transportation and infrastructure financing, and energy and ''green'' building practices.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20	1		49		980

Total Estimated Burden Hours: 980.

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–17499 Filed 7–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2012–N159; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Issuance of Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued the following permits, between January and June 2012, to conduct certain activities with endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits for endangered species.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Permit Coordinator Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

We have issued the following permits in response to incidental take and recovery permit applications we received under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*). Each permit listed below was issued only after we determined that it was applied for in good faith; that granting the permit would not be to the disadvantage of the listed species; and that the terms and conditions of the permit were consistent with the purposes and policies set forth in the Act.

Applicant name	Permit No.	Date issued	Date expired
Recovery Permits			
Montana Fish, Wildlife, and Parks	047250	01/01/2012	09/30/2016
Bureau of Land Management	059105	01/01/2012	09/30/2016
California Academy of Sciences	161444	01/01/2012	06/30/2015
Colorado Parks and Wildlife	047290	01/01/2012	03/13/2017
Department of the Army	049623	01/01/2012	06/30/2017
Saratoga National Fish Hatchery	052204	01/01/2012	09/30/2016
Colorado State University	056079	01/01/2012	06/30/2016
Utah State University	07858A	01/01/2012	06/30/2017
Kansas Department of Health and Environment	064685	01/01/2012	06/30/2017
Detroit Zoo	.....	.....	.....
Dakota Zoological Society	051815	01/01/2012	06/30/2015
Kleinfelder	056165	01/01/2012	03/31/2016
Cedar Creek Associates	050704	01/01/2012	09/30/2016
Toronto Zoo	051841	01/01/2012	12/31/2016

Applicant name	Permit No.	Date issued	Date expired
Louisville Zoo	051826	01/01/2012	12/31/2016
Wyoming Natural Diversity Database	085324	01/01/2012	09/30/2016
Toledo Zoological Gardens	052627	01/01/2012	09/30/2016
Wind Cave National Park	145090	01/01/2012	12/31/2016
Colorado Parks and Wildlife	051368	01/01/2012	09/30/2016
Denver Botanic Gardens	106182	01/01/2012	09/30/2016
Red Butte Garden and Arboretum	049109	01/01/2012	09/30/2016
Missouri National Recreational River	67018A	01/01/2012	09/30/2016
Omaha's Henry Doorly Zoo	053961	01/01/2012	09/30/2016
Turner Endangered Species Fund	051139	01/01/2012	12/31/2016
Northern Prairie Wildlife Research Center	121914	01/01/2012	09/30/2016
Great Plains Fish & Wildlife Conservation Office	056851	01/01/2012	09/30/2016
Utah State University	08832A	01/01/2012	09/30/2016
Two R Ranch Wildlife Consulting	66793A	04/23/2012	04/30/2017
Niobrara National Scenic River	053925	01/01/2012	09/30/2016
Missouri River Fish & Wildlife Conservation Office	105455	01/01/2012	12/31/2015
Nebraska National Forests and Grasslands	051374	01/01/2012	09/30/2016
Kansas Department of Wildlife and Parks	052005	01/01/2012	09/30/2016
Colorado Natural Heritage Program	059369	01/01/2012	09/30/2016
Kansas State University	067729	03/13/2012	06/30/2016

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents (see **FOR FUTHER INFORMATION CONTACT** section of this notice).

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: July 5, 2012.

Michael G. Thabault,

Acting Regional Director, Mountain-Prairie Region.

[FR Doc. 2012–17451 Filed 7–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Indian Reservation Roads

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for Indian Reservation Roads. The information collection is currently authorized by OMB Control Number 1076–0161, which expires July 31, 2012.

DATES: Interested persons are invited to submit comments on or before August 17, 2012.

ADDRESSES: You may submit comments on the information collections to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806; or you may send an email to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1849 C Street NW., MS–4512 MIB, Washington, DC 20240; facsimile: (202) 208–4696 email: *LeRoy.Gishi@bia.gov.*

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, (202) 513–7711. You may review the information collection requests online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection allows Federally recognized Tribal governments to participate in the Indian Reservation Roads (IRR) program as defined in 25 U.S.C. 204(a)(1). The information collected determines the allocation of IRR program funds to Indian tribes as described in 25 U.S.C. 202(d)(2)(A).

II. Request for Comments

The BIA requests your comments on these collections concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0161.

Title: 25 CFR part 170, Indian Reservation Roads.

Brief Description of Collection: Some of the information such as the application of Indian Reservation Roads High Priority Projects (IRRHPP) (25 CFR 170.210), the road inventory updates (25 CFR 170.443), the development of a long range transportation plan (25 CFR 170.411 and 170.412), the development of a tribal transportation improvement program and priority list (25 CFR 170.420 and 170.421) are mandatory for

consideration of projects and for program funding from the formula. Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.439). While other information, such as data appeals (25 CFR 170.231) and requests for design exceptions (25 CFR 170.456), are voluntary.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Indian Tribal governments who have transportation needs associated with the IRR Program as described in 25 CFR part 170.

Number of Respondents: 1,409.

Frequency of Response: Annually or on an as needed basis.

Estimated Time per Response: Reports require from 30 minutes to 40 hours to complete. An average would be 16 hours.

Estimated Total Annual Hour Burden: 19,628 hours.

Estimated Total Annual Cost Burden: $0.

Dated: July 13, 2012.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2012–17471 Filed 7–17–12; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00100 LF1000000.HT0000 LXSS020D0000 4500031240]

Proposed Supplementary Rules for the Morley Nelson Snake River Birds of Prey National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules for all BLM-administered public lands within the approximately 483,700-acre Morley Nelson Snake River Birds of Prey National Conservation Area (NCA), addressed in the September 2008 Resource Management Plan (RMP) and Record of Decision (ROD). The Snake River Birds of Prey NCA RMP identifies implementation level decisions which describe an array of management actions designed to conserve natural and cultural resources on BLM administered land while providing for recreational opportunities. These supplementary rules would help enforce the decisions in the NCA RMP.

DATES: Interested parties may submit written comments regarding the proposed supplementary rules until September 17, 2012.

ADDRESSES: You may submit comments by mail, electronic mail, or hand-delivery. Mail or Hand Delivery: Jared Fluckiger, Outdoor Recreation Planner, Bureau of Land Management, Boise District Office, 3948 Development Ave. Boise, Idaho 83705. Electronic Mail: *BLM_ID_BOP_NCA_Rules@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Jared Fluckiger, Outdoor Recreation Planner, at 208–384–3342 or by email at *BLM_ID_BOP_NCA_Rules@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Flukiger.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 103–64 established the NCA in 1993 for the ''* * * conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith * * *'' The NCA's RMP was completed in September 2008.

The NCA is located in southwestern Idaho, within a 30-minute drive of Idaho's capital, Boise, where almost half of the State's population resides. It is located in Ada, Canyon, Elmore, and Owyhee counties and encompasses approximately 483,700 public land acres extending 81 miles along the Snake River. The NCA includes the 138,000-acre Orchard Training Area, used by the Idaho Army National Guard for military training since 1953. Within its boundary are approximately 41,200 State, 4,800 private, and 1,600 military acres, and 9,300 acres covered by water. These lands are not affected by the NCA designation or subsequent RMP decisions.

These proposed supplementary rules would help the BLM achieve management objectives and implement RMP decisions. They would also provide the BLM with enforcement capability to help prevent damage to natural resources, and provide for public health and safety.

II. Public Comment Procedures

You may mail, email, or hand-deliver comments to Jared Fluckiger, Recreational Planner, at the addresses listed above (See **ADDRESSES**). Written comments on the proposed supplementary rules should be specific and confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider, or include in the Administrative Record for the final supplementary rules, comments delivered to an address other than those listed above (See **ADDRESSES**) or comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information for respondents, will be available for public review at the BLM Boise District Office address listed in **ADDRESSES** during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Discussion of Proposed Supplementary Rules

In keeping with the BLM performance goal of reducing threats to public health, safety, and property, supplementary rules are necessary to protect the natural and cultural resources within the NCA as described in the NCA Management Plan; to allow for safe public recreation and public health; to reduce the potential for environmental damage; and to enhance the safety of visitors and neighboring residents.

The proposed supplementary rules would prohibit rock climbing and rappelling on BLM-administered public land within the Morley Nelson Snake River Birds of Prey NCA because of adverse effects to 16 species of raptors that nest in or on canyon walls at various times of the year. Unstable basalt also poses a significant safety hazard to anyone climbing on the cliffs.

Prohibiting open fires outside of BLM-approved fire rings would help avert human-caused wildfire which would protect archeological sites and slickspot peppergrass (*Lepidium papilliferum*),

which is a Federally listed species under the Endangered Species Act.

In the past, some of the NCA's significant cultural resources have been damaged by paintball gun use. Prohibiting paintball activities within the Snake River Canyon and within ¼ mile of the canyon rim eliminates the adverse effects to early cabin architecture, ferry crossings, Oregon Trail segments, and petroglyphs.

With supplementary rules, the BLM would better manage its wildlife habitat and cultural resources. There would be improved opportunities for NCA users to view and study nesting raptors. Prohibition of rock climbing and rapelling would protect raptor nests, reduce the potential for other environmental damage, and curtail safety risks and rescue emergency situations. The chances of a human-caused wildfire would be reduced, and cultural resources would receive greater protection.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They would not have an effect of $100 million or more on the economy. They would not adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor would they raise novel legal or policy issues. The proposed rules merely contain rules of conduct for public use of a limited selection of public lands to protect public health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the proposed supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act (NEPA)

The BLM prepared an environmental impact statement as part of the development of the NCA RMP. During that NEPA process, many alternative decisions for the NCA were fully analyzed and offered for public comment, including the substance of these proposed supplementary rules. The pertinent analysis can be found in Chapter 4 of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Snake River Birds of Prey National Conservation Area, April 2006. The ROD for the RMP was signed by the Idaho BLM State Director on September 30, 2008. These supplementary rules provide for enforcement of plan decisions. The rationale for the decisions made in the plan is fully covered in the ROD. It is available for review in the BLM administrative record at the address specified in the **ADDRESSES** section and online at *http://www.blm.gov/id/st/en/fo/four_rivers/Planning/snake_river_birds.html.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules would merely establish rules of conduct for use of a limited area of public lands and would have no effect on business entities of any size. Therefore, the BLM has determined, under the RFA, that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of $100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. These proposed supplementary rules would merely establish rules of conduct for use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year nor do they have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These proposed supplementary rules would not have significant takings implications nor would they be capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that these rules would not cause a ''taking'' of private property or require preparation of a takings assessment.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rules would not conflict with any law or regulation of the State of Idaho. Therefore, in accordance with Executive Order 13132,

the BLM has determined that these proposed supplementary rules would not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

The BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM has found that these proposed supplementary rules do not include policies that would have tribal implications.

Information Quality Act

The Information Quality Act (Section 515 of Pub. L. 106–554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information to the public.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules would not constitute a significant energy action. The proposed supplementary rules would not have an adverse effect on energy supplies, production, or consumption, and have no connection with energy policy.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Stanley Buchanan, Boise District Law Enforcement Ranger, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Morley Nelson Snake River Birds of Prey NCA, Bureau of Land Management, proposes to issue supplementary rules for BLM-administered lands covered under the Snake River Birds of Prey NCA RMP, to read as follows:

Supplementary Rules for the Morley Nelson Snake River Birds of Prey National Conservation Area

Definitions

Rock Climbing: A sport/technique in which participants climb up, down or across natural rock formations, usually with ropes and other equipment. Rock climbing is similar to scrambling (another activity involving the scaling of hills and similar formations), but climbing is generally differentiated by its sustained use of hands to support the climber's weight as well as to provide balance.

Rappelling: A descent of a vertical surface, as a cliff or wall, by sliding down a belayed rope that is passed under one thigh and over the opposite shoulder or through a device that provides friction, typically while facing the surface and performing a series of short backward leaps to control the descent.

Improved Campsite: A specific location identified by the BLM for camping. Improved campsites include individual sites in developed campgrounds and developed recreation sites for camping that may or may not contain picnic tables, shelters, parking sites, and/or grills. All improved campsites are identified by a BLM map or sign.

Open Fires: Any fire not in a BLM-approved metal fire ring.

On BLM-administered public land within the Morley Nelson Snake River Birds of Prey National Conservation Area, you must comply with the following supplementary rules:

1. Rock climbing and rappelling are prohibited on all lands administered by the BLM within the NCA.

2. Open fires are prohibited on all lands administered by the BLM within the NCA. Campfires may only be located on improved campsites within BLM-approved metal fire rings on all lands administered by the BLM within the NCA. Additional restrictions may be imposed during periods of high fire danger.

3. Paintball guns and equipment may not be used within the Snake River Canyon or within ¼ mile of the canyon rim.

Penalties: On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Steven A. Ellis,

Bureau of Land Management, State Director, Idaho.

[FR Doc. 2012–17448 Filed 7–17–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Intent To Initiate Public Scoping and Prepare an Environmental Impact Statement for the Four Corners Power Plant and Navajo Mine Energy Project

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent to initiate public scoping and prepare an Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4231–4347; the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 40 CFR Parts 1500 through 1508; and the Department of the Interior's (DOI) NEPA regulations, 43 CFR Part 46, the Office of Surface Mining Reclamation and Enforcement (OSM), Western Region (WR), Denver, Colorado, intends to prepare an Environmental Impact Statement (EIS). The EIS will analyze the impacts for several related actions. It will analyze impacts for the BHP Navajo Coal Company (BNCC) Proposed Pinabete Permit and for the Navajo Mine Permit Renewal, both of which are located on the Navajo Reservation in San Juan County, New Mexico. The EIS will also analyze the impacts for the Arizona Public Service Company (APS) Proposed Four Corners Power Plant (FCPP) lease amendment, located on the Navajo Reservation in San Juan County, New Mexico, and associated transmission line rights-of-way renewals for lines located on the Navajo and Hopi Reservations in San Juan County, New Mexico and Navajo, Coconino and Apache Counties in Arizona. The EIS will also analyze impacts for the Public Service Company of New Mexico (PNM) transmission line rights-of-way renewal associated with the FCPP and located on the Navajo Reservation in New Mexico. This Notice refers to these proposals collectively as the ''Project.'' OSM is requesting public comments on the scope of the EIS and significant issues that should be addressed in the EIS.

DATES: This notice initiates the public scoping process. To ensure consideration in developing the draft EIS, we must receive your electronic or written comments by the close of the scoping period on September 17, 2012. At the scoping meetings, the public is invited to submit comments and resource information, and identify issues or concerns to be considered in NEPA compliance process.

We will host public scoping meetings where you may submit written and oral comments. These open house public scoping meetings will be held at the following locations:

- Hotevilla, Arizona, on Thursday, August 9, 2012, from 3:00 p.m. to 7:00 p.m. at the Hotevilla Village.
- Cortez, Colorado, on Friday, August 10, 2012, from 5:00 p.m. to 9:00 p.m. at the Montezuma-Cortez High School.
- Burnham, New Mexico, on Saturday, August 11, 2012, from 9:00 a.m. to 1:00 p.m. at the Burnham Chapter House, Navajo Indian Reservation.
- Nenahnezad, New Mexico, on Monday, August 13, 2012, from 5:00 p.m. to 9:00 p.m. at the Nenahnezad Chapter House, Navajo Indian Reservation.
- Farmington, New Mexico, on Tuesday, August 14, 2012, from 5:00 p.m. to 9:00 p.m. at the Farmington Civic Center.
- Shiprock, New Mexico, on Wednesday, August 15, 2012, from 5:00 p.m. to 9:00 p.m. at the Shiprock High School.
- Durango, Colorado, on Thursday, August 16, 2012, from 4:00 p.m. to 8:00 p.m. at the Durango Public Library.
- Window Rock, Arizona, on Friday, August 17, 2012, from 5:00 p.m. to 9:00 p.m. at the Navajo Nation Museum.
- Albuquerque, New Mexico, on Saturday, August 18, 2012, from 11:00 a.m. to 3:00 p.m. at the Indian Pueblo Cultural Center.

Times, dates, and specific locations for these meetings will also be announced through the OSM WR Web site *http://www.wrcc.osmre.gov/FCPPEIS.shtm,* press releases, local newspapers, radio announcements and other media, at least 15 days prior to each event.

Hopi and Navajo interpreters will be present at meetings on the Hopi and Navajo Reservations.

If you require reasonable accommodations to attend one of the meetings, contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

ADDRESSES: Comments may be submitted in writing or by email. At the top of your letter or in the subject line of your email message, please indicate that the comments are ''Four Corners-Navajo Mine EIS Comments.''

- *Email comments should be sent to: fcppnavajoenergyeis@osmre.gov.*
- *Mail/Hand-Delivery/Courier:* Written comments should be sent to: Marcelo Calle, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202–3050.

FOR FURTHER INFORMATION CONTACT: For further information about the Project and/or to have your name added to the mailing list, contact: Marcelo Calle, OSM Project Coordinator, at 303–293–5035. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background on the Project

The purpose of the Project is to facilitate ongoing operations at the FCPP, and on BNCC's Navajo Mine Lease to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern U.S., using a reliable and readily available fuel source. The Project proposes to accomplish this while complying with tribal trust responsibilities, both to support economic opportunities on Navajo Nation and Hopi tribal trust lands, and to help provide for economic development of the Navajo Nation and Hopi Tribe through lease and right-of-way revenues, royalties, tribal taxes and jobs. The EIS will address the direct, indirect, and cumulative impacts of these actions at the FCPP, the proposed Pinabete Permit area, and the existing Navajo Mine Permit area, including any connected Federal actions relating to operations on the Navajo Mine Lease and at FCPP.

At this time the Navajo Nation, Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS), and U.S. Army Corps of Engineers (USACE) will cooperate with OSM in the preparation of the EIS. The USACE will use this public scoping as part of the Clean Water Act (CWA) Section 404, 33 U.S.C. 1344, permitting public noticing process. The USACE will have material available on the proposed impacts to waters of the United States, and will accept comments during the meetings described below. This scoping process is intended to fulfill the USACEs' public meeting or hearing requirement for the proposed action.

OSM will conduct compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA Section 106) as provided for in 36 CFR 800.2(d)(3) concurrently with the NEPA process, including public involvement requirements and consultation with the State Historic Preservation Officer and Tribal Historic Preservation Officer. Native American tribal consultations will be conducted in accordance with applicable laws, regulations, and Department of Interior policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, tribal, state, and local agencies, along with other stakeholders that may be interested in or affected by the Federal agencies' decisions on the Project, are invited to participate in the scoping process and, if eligible, may request or be requested by OSM to participate as a cooperating agency.

Interested persons may view information about the proposed Project on our Web site at *http://www.wrcc.osmre.gov/FCPPEIS.shtm;*. The Web site contains information related to the comment period during which persons may submit comments, and the locations, dates, and times of public scoping meetings.

As part of its consideration of impacts of the proposed Project on threatened and endangered species, OSM will conduct formal consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, and its implementing regulations, 50 CFR Part 400. Formal consultation will consider direct and indirect impacts from the proposed Project, including operation of the FCPP, continuing operation and maintenance of existing transmission lines and ancillary facilities, and all mining and related operations within the Navajo Mine Lease.

In addition to compliance with NEPA, NHPA Section 106, and ESA Section 7, all Federal actions will be in compliance with applicable requirements of the Indian Business Site

Leasing Act, 25 U.S.C. 415; the General Right-of-Way Act of 1948, 25 U.S.C. 323–328; the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201–1328; the CWA, 33 U.S.C. 1251–1387; the Clean Air Act, 42 U.S.C. 7401–7671q; the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001–3013; and Executive Orders relating to Environmental Justice, Sacred Sites, and Tribal Consultation, and other applicable laws and regulations.

II. Background on the Four Corners Power Plant

The FCPP, located on tribal trust lands in the New Mexico portion of the Navajo Reservation, is a coal-fired electric generating station, which currently includes five units generating approximately 2,100 megawatts, and provides power to more than 500,000 customers. Nearly 80 percent of the employees at the plant are Native American. APS operates the FCPP, and recently executed a lease amendment (Lease Amendment No. 3) with the Navajo Nation to extend the term of the lease for the FCPP an additional 25 years, to 2041. Continued operation of the FCPP is expected to require several Federal actions, including:

- Approval from BIA of Lease Amendment No. 3 for the FCPP plant site, pursuant to 25 U.S.C. 415. Lease Amendment No. 3 has been signed by the Navajo Nation after Navajo Nation Council approval.
- Issuance by BIA of renewed rights-of-way, pursuant to 25 U.S.C. 323, for the FCPP plant site and its switchyard and ancillary facilities; for a 500 kilovolt (kV) transmission line and two 345 kV transmission lines; and for ancillary transmission line facilities, including the Moenkopi Switchyard, an associated 12 kV line, and an access road; (collectively the ''Existing Facilities''). The Existing Facilities are located on the Navajo Reservation, except for the 500 kV transmission line which crosses both Navajo and Hopi tribal lands. The Existing Facilities are already in place and would continue to be maintained and operated as part of the proposed action. No upgrades to the transmission lines or ancillary transmission line facilities are planned as part of the proposed Project.
- Issuance by the BIA of renewed rights-of-way to PNM for the existing 345 kV transmission facilities. The transmission facilities are already in place, and will continue to be maintained and operated as part of the proposed action. No upgrades to these transmission lines are planned as part of the proposed Project.

The desired future operation of the FCPP plant site involves removing Units 1, 2, and 3 from service on or before 2014, installing pollution control upgrades on Units 4 and 5, and continued operation of the independent switch yard and transmission lines. This scenario would substantially reduce coal consumption and air emissions, and lower the power output of the plant to approximately 1,500 megawatts. The ash disposal area would expand in future years within the current FCPP lease boundary. There is no proposed change to the exterior boundary of the FCPP site, the switch yard, or any of the transmission lines and ancillary facilities as part of the proposed actions.

III. Application for the Pinabete Mine Permit and the Navajo Mine Permit Renewal

Concurrent with the proposed FCPP lease amendment approval and renewed rights-of-way grant actions, BNCC proposes to develop a new approximately 5,600-acre permit area, called the Pinabete Permit. This proposed permit area lies within the boundaries of BNCC's existing Navajo Mine Lease, which is located adjacent to the FCPP on tribal trust lands on the Navajo Reservation. BNCC proposes to conduct mining operations on an approximately 3,100-acre portion of the proposed Pinabete Permit area. The proposed Pinabete Permit area would, in conjunction with the mining of any reserves remaining within the existing Navajo Mine Permit area (Federal SMCRA Permit NM0003F), supply low-sulfur coal to the FCPP at a rate of approximately 5.8 million tons per year. Development of the Pinabete Permit area and associated coal reserves would use surface mining methods and, based on current projected customer needs, would supply coal to FCPP for up to 25 years beginning in 2016. The proposed Pinabete Permit area would include previously permitted but undeveloped coal reserves within Area IV North of the Navajo Mine Lease, and unpermitted and undeveloped coal reserves in a portion of Area IV South of the existing Navajo Mine Lease. Approval of the proposed Pinabete Permit is expected to require several Federal actions, including:

- Approval by OSM of the new SMCRA permit.
- Approval by the BLM of a revised Mine Plan developed for the proposed maximum economic recovery of coal reserves.
- Approval of a Section 404 Individual Permit by the USACE for the impacts to waters of the United States from proposed mining activities.
- Approval of a Section 402 National Pollutant Discharge Elimination System (NPDES) permit or permit revision by the EPA.
- Approval by the BIA of a proposed realignment for approximately 2.8 miles of BIA 3005/Navajo Road N–5082 (Burnham Road) in Area IV South to avoid proposed mining areas.
- Approval or grant of permits or rights-of-way for access and haul roads, power supply for operations, and related facilities by the BIA.

In addition, OSM expects BNCC to submit a renewal application in 2014 for its existing Navajo Mine SMCRA Permit No. NM00003F. The EIS will therefore also address alternatives and direct, indirect, and cumulative impacts of the 2014 renewal application action.

IV. Alternatives and Related Impacts Under Consideration

The proposed actions will be considered in a single EIS that will address alternatives and direct, indirect, and cumulative impacts of the Project.

Alternatives for the Project that are under consideration include:

(a) The proposed actions described above;

(b) A no action alternative, which would result in the expiration of the FCPP lease and associated rights-of-way, but would not result in the expiration of BNCC's Navajo Mine Lease; and

(c) Any environmentally preferable alternatives that may be identified in accordance with 40 CFR Part 1500 and 43 CFR Part 46.

The purpose of the public scoping process is to determine relevant issues that could influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS and related compliance efforts. The final range of reasonable alternatives to be considered will be determined based in part on the comments received during the scoping process.

At present, OSM has identified the following preliminary issues and potential impacts:

- Threatened and endangered species, including the Razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychochelius Lucius*), and Southwestern Willow Flycatcher (*Empidonax traillii extimus*);
- Air quality and climate change;
- Surface and ground water quality;
- Environmental Justice considerations;
- Cultural and historic resources;
- Biological resources;
- Visual resources;
- Public Health;
- Socioeconomics; and

- Noise and vibration.

V. Public Comment Procedures

In accordance with the CEQ's regulations for implementing NEPA and the DOI's NEPA regulations, OSM solicits public comments on the scope of the EIS and significant issues that it should address in the EIS.

Written comments, including email comments, should be sent to OSM at the addresses given in the **ADDRESSES** section of this notice. Comments should be specific and pertain only to the issues relating to the proposals. OSM will include all comments in the administrative record.

If you would like to be placed on the mailing list to receive future information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, above.

Hopi and Navajo interpreters will be present at meetings on the Hopi and Navajo Reservations.

If you require reasonable accommodation to attend one of the meetings, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

Availability of Comments

OSM will make comments, including name of respondent, address, phone number, email address, or other personal identifying information, available for public review during normal business hours. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review to the extent consistent with applicable law.

Dated: June 8, 2012.

Allen D. Klein,

Regional Director, Western Region.

[FR Doc. 2012–17437 Filed 7–17–12; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1189 (Final)]

Large Power Transformers From Korea; Revised Schedule for the Subject Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On February 16, 2012, the Commission established a schedule for the conduct of the final phase of the subject investigation (77 FR 16559, March 21, 2012). The Commission is revising its schedule as follows: the Commission will make its final release of information on August 3, 2012; and final party comments are due on August 7, 2012.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 12, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–17416 Filed 7–17–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Modification Under the Clean Water Act

Notice is hereby given that on July 2, 2012, a proposed Consent Decree Modification (''Modification'') in *United States and State of New Hampshire* v. *City of Portsmouth, New Hampshire,* Civil Action No. 09–CV–283–PB, was lodged with the United States District Court for the District of New Hampshire.

The Modification modifies a Consent Decree between the parties which was entered by the federal district court on September 24, 2009 (''Decree''). The Decree resolved claims of the United States and State of New Hampshire against the City of Portsmouth, New Hampshire (the ''City''), pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1301(a).

The Decree required the City, among other things, to control discharges from the combined sewer overflow (''CSO'') outfalls, propose a schedule for construction of a secondary wastewater treatment facility for approval by the United States Environmental Protection Agency, and upon inclusion of the schedule in the Decree, comply with the construction schedule. The City encountered unexpected geological conditions that impaired the City's ability to meet the previously-designated CSO mitigation construction schedule. The Modification extends the completion deadline for the CSO projects by one year—until October 2014. Pursuant to the requirements in the Decree, the City proposed a detailed schedule for constructing secondary treatment facilities. The Modification requires the City to complete construction of secondary treatment facilities by March, 2017.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Modification. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of New Hampshire* v. *City of Portsmouth, New Hampshire,* Civil Action No. 09–CV–283–PB, D.J. Ref. 90–5–1–1–09308.

During the public comment period, the Modification, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the

Modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–17417 Filed 7–17–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–353]

Proposed Adjustment of the Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice proposes to adjust the 2012 assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before August 17, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–353'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Chief, Liaison and Policy Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–4654.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

On December 12, 2011, DEA established the assessment of annual needs for 2012 for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 826(a) and 21 CFR 1315.11 (76 FR 77252). That Notice indicated that DEA would adjust the assessment of annual needs at a later date, if necessary, as provided in 21 CFR 1315.13.

DEA now proposes to adjust the established assessment of annual needs for 2012 for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. In proposing the adjustment, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 CFR 1315.13. DEA proposes the adjustment of the assessment of annual needs for 2012 by considering: (1) Changes in demand, changes in the national rate of net disposal, and changes in the rate of net disposal by the registrants holding individual manufacturing or import quotas for the chemical; (2) whether any increased demand or changes in the national and/or individual rates of net disposal are temporary, short term, or long term; (3) whether any increased demand can be met through existing inventories, increased individual manufacturing quotas, or increased importation without increasing the assessment of annual needs; (4) whether any decreased demand will result in excessive inventory accumulation by all persons registered to handle the particular chemical; and (5) other factors affecting the medical, scientific, research, industrial, and importation needs in the United States, lawful export requirements, and reserve stocks, as the Administrator finds relevant.

Other factors that DEA considered include trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. The inventory, acquisition (purchases), and disposition (sales) data as provided by DEA registered manufacturers and importers reflects the most current information available to DEA at the time of publication of this Notice.

Analysis

In determining whether to propose adjustments to the 2012 assessment of annual needs, DEA considered the total net disposals (*i.e.,* sales) of the list I

chemicals for the current and preceding two years, actual and estimated inventories, projected demand (2012), industrial use, and export requirements from updated data provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), manufacturing quota applications (DEA 189), import quota applications (DEA 488), declarations for import and export, and other information. Data considered included data submitted to DEA after the initial assessment of annual needs had been established. DEA notes that the inventory, acquisition (purchases), and disposition (sales) data proved by DEA registered manufacturers and importers reflects the most current information available. In developing the proposed 2012 revision, DEA has used the calculation methodology described previously in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407, respectively).

As of June 6, 2012, DEA registered manufacturers of dosage form products containing pseudoephedrine requested quota for 322,385 kg of pseudoephedrine. DEA registered manufacturers of pseudoephedrine reported sales totaling approximately 189,030 kg in 2010 and 268,669 kg in 2011; this represents a 30 percent increase in sales reported by these firms from 2010 to 2011. Additionally, DEA considered information on trends in the national rate of net disposals from sales data provided by IMS Health. The initial assessment of annual needs was based on data received by DEA as of October 17, 2011. Based on the updated information provided to DEA as of June 6, 2012, DEA is proposing to increase the 2011 assessment of annual needs for pseudoephedrine from 258,000 kg to 278,000 kg.

As of June 6, 2012, DEA registered manufacturers of dosage form products containing ephedrine requested quota for 4,221 kg of ephedrine (for sale) in 2012. DEA registered manufacturers of ephedrine reported sales totaling approximately 1,598 kg in 2010 and 3,158 kg in 2011; this represents a 49 percent increase in sales reported by these firms from 2010 to 2011. Additionally, DEA considered information on trends in the national rate of net disposals from sales data provided by IMS Health. The initial assessment of annual needs was based on data received by DEA as of October 17, 2011. Based on the updated information provided to DEA as of June 6, 2012, DEA is proposing to increase the 2012 assessment of annual needs for ephedrine (for sale) from 4,000 kg to 4,300 kg.

As of June 6, 2012, DEA registered manufacturers of phenylpropanolamine (for sale) requested quota for 7,763 kg of phenylpropanolamine (for sale). DEA registered manufacturers of phenylpropanolamine reported sales totaling approximately 4,790 kg in 2010 and 5,289 kg in 2011; this represents a nine percent increase in sales reported by these firms from 2010 to 2011. DEA notes that phenylpropanolamine is sold primarily as a veterinary product and is not approved for human consumption. IMS Health's NSP Data does not capture sales of phenylpropanolamine to veterinary channels and is, therefore, not considered. The initial assessment of annual needs was based on data received by DEA as of October 17, 2011. DEA is proposing to increase the 2012 assessment of annual needs for phenylpropanolamine (for sale) from 5,200 kg to 5,800 kg.

As of June 6, 2012, the data provided to DEA for review of phenylpropanolamine (for conversion) and ephedrine (for conversion) demonstrated no significant changes in demand or net disposals. DEA has thus determined that the assessment of annual needs for these chemicals—phenylpropanolamine (for conversion) and ephedrine (for conversion)—shall remain unchanged.

The Administrator, therefore, proposes the following adjustment of the 2012 assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine as follows:

List I chemicals	2012 assessment of annual needs (kg)	Proposed adjustment to the 2012 assessment of annual needs (kg)
Ephedrine (for sale)	4,000	4,300
Phenylpropanolamine (for sale)	5,200	5,800
Pseudoephedrine	258,000	278,000
Phenylpropanolamine (for conversion)	26,200	No Change
Ephedrine (for conversion)	12,000	No Change

In finalizing the adjustment of the 2012 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine, DEA will consider any additional changes in demand, changes in the national rate of net disposal, or changes in the rate of net disposal by the registrants holding individual manufacturing or import quotas for the chemical, in accordance with 21 CFR Part 1315.

Comments

Pursuant to 21 CFR 1315.13, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Administrator will publish in the **Federal Register** a Final Order determining any adjustment of the assessment of annual needs.

Dated: July 13, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–17522 Filed 7–17–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1596]

Meeting of the Attorney General's National Task Force on Children Exposed to Violence (Correction)

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice; correction.

SUMMARY: The Office of Justice Programs (OJP) published a notice in the **Federal Register** on July 2, 2012, announcing a meeting of the Attorney General's National Task Force on Children Exposed to Violence (the ''task force''). As that notice stated, the final agenda

was still being developed at the time of the July 2, 2012, notice. The purpose of this notice is to announce that the task force will not hold a public meeting on July 24th and 25th, but rather, will be conducting preparatory work related to developing a draft report to the Attorney General. OJP will provide notice of future public meetings of the task force as they are scheduled.

FOR FURTHER INFORMATION CONTACT: Will Bronson, Designated Federal Officer (DFO), Deputy Associate Administrator, Child Protection Division, Office of Juvenile Justice & Delinquency Prevention, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531. Phone: (202) 305–2427 [**Note:** this is not a toll-free number]; email: *willie.bronson@usdoj.gov.*

Catherine Pierce,

Associate Administrator, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Child Protection Division.

[FR Doc. 2012–17472 Filed 7–17–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *June 25, 2012 through June 29, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the

Federal Register under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,405	Lumber Products, Millwork & Components Division, Aerotek and Madden Industrial Craftsmen.	Tualatin, OR	February 27, 2011.
81,687	Amerbelle Textiles LLC, Job Pro	Vernon, CT	June 5, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,546	Lawson Software, Inc., UI Wages Reported Through Lawson Software Americas, Inc. and Infor, Inc.	St. Paul, MN	April 26, 2011.
81,604	Walbar, Inc., AMI Industries, Goodrich Pump & Engine, Goodrich Corp., Adecco.	Chandler, AZ	May 19, 2012.
81,663	American Express Travel Related Services Company, Inc., American Express Company, Global Service Delivery Optimization Division.	Phoenix, AZ	May 26, 2011.
81,721	WellPoint, Inc., WellPoint Companies, Inc., Post Service Clinical Claims Review Department.	Denver, CO	June 14, 2011.
81,722	JDS Uniphase, Communications Test and Measurement Division	Indianapolis, IN	July 30, 2011.
81,722A	Lease Workers from Randstad Sourceright, Working On-Site at JDS Uniphase, Communications Test and Measurement Div.	Indianapolis, IN	June 14, 2011.
81,723	JDS Uniphase, Communications Test and Measurement Division, Randstad Sourceright.	Milpitas, CA	June 14, 2011.
81,724	JDS Uniphase, Communications Test and Measurement Division, Randstad Sourceright.	Mill Creek, WA	June 14, 2011.
81,725	JDS Uniphase, Communications Test and Measurement Division	Germantown, MD	August 1, 2011.
81,725A	Leased Workers from Randstad Sourceright, Working On-Site at JDS Uniphase, Communications Test and Measurement Div.	Germantown, MD	June 14, 2011.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,585	Light Metals, Gill Staffing and Ameritemp Staffing	Wyoming, MI	May 19, 2010.
81,600	Mannington Wood Floors, Mannington Mills, Inc., Graham and Associates.	High Point, NC	December 7, 2010.
81,622	Coastal Industries, Inc., Trillium Drive Solutions	Jacksonville, FL	May 19, 2010.
81,630	Benada Aluminum Products LLC	Sanford, FL	May 19, 2010.
81,643	Frontier Aluminum, Kamran Staffing & Secure Staffing	Corona, CA	May 19, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
81,335	Technicolor Creative Services, Post Production Feature Mastering, Ajilon Professional Staffing and Kforce.	Hollywood, CA	
81,354	ALCOA, Inc., Global Packaging Division	Alcoa, TN	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,556	International Automotive Components, LLC	Canton, OH	
81,579	James W. Toumey Nursery, Region 9, Ottawa National Forest	Watersmeet, MI	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
81,527	Alliant Techsystems Operations, LLC (ATK), Radford Facility Army Ammunition, Energetic Systems, Valley Staffing, etc.	Radford, VA	
81,565	The Travelers Indemnity Company, Personal Insurance Remittance Center.	Hartford, CT	
81,577	Gorell Windows & Doors, LLC., Gorell Entereprises, Inc.	Indiana, PA	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
81,684	SL Montevideo Technology, Inc.	Montevideo, MN	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
81,758	Medical Card System	De Pere, WI.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,581	Dana Holding Corporation, Working On-Site at General Motors Corporation.	Shreveport, LA.	
81,582	The Landing of GM, Working On-Site at General Motors Corporation.	Shreveport, LA.	
81,583	Filtration Services Group, Working On-Site at General Motors	Shreveport, LA.	
81,584	BASF, Working On-Site At General Motors Corporation	Shreveport, LA.	
81,617	G4S Secure Solutions (USA), Inc., Working On-Site At General Motors Corporation.	Shreveport, LA.	
81,659	Seibert Powder Coating, Working On-Site at General Motors Corporation.	Shreveport, LA.	
81,660	Advantis Occupational Health, Working On-Site at General Motors Corporation.	Shreveport, LA.	

I hereby certify that the aforementioned determinations were issued during the period of *June 25, 2012 through June 29, 2012.* These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: July 5, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–17373 Filed 7–17–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 30, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 30, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of July 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[23 TAA petitions instituted between 6/25/12 and 6/29/12]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81743	Emerson Power Transmission (Company)	Ithaca, NY	06/25/12	06/21/12
81744	Kyowa America Corp. (Workers)	Waynesburg, PA	06/25/12	06/22/12
81745	North Sails Nevada (Workers)	Minden, NV	06/25/12	06/22/12
81746	Lattice Semiconductor Corporation (4 groups) in OR & CA (Company).	San Jose, CA	06/25/12	06/22/12
81747	Logan Industries (State/One-Stop)	Spokane, WA	06/25/12	06/14/12
81748	Clear Edge Filtration (Company)	Skaneateles, NY	06/25/12	06/20/12
81749	Honeywell Scanning & Mobility (Workers)	Blackwood, NJ	06/25/12	06/25/12
81750	Crawford and Company (Workers)	Atlanta, GA	06/25/12	06/22/12
81751	GMVM—Shreveport (State/One-Stop)	Shreveport, LA	06/25/12	06/22/12
81752	WestPoint Home Chipley Plant (Company)	Chipley, FL	06/25/12	06/22/12
81753	WestPoint Home Administration/Engineering Office (Company).	Valley, AL	06/25/12	06/22/12
81754	WestPoint Home—Clemson Centre (Company)	Clemson, SC	06/25/12	06/22/12
81755	Thomson Reuters (State/One-Stop)	Eagan, MN	06/26/12	06/25/12
81756	Media News/Contra Costa Times (Workers)	Walnut Creek, CA	06/26/12	06/15/12
81757	Pro-Dex Astromec (State/One-Stop)	Carson City, NV	06/26/12	06/25/12
81758	Medical Card System (State/One-Stop)	De Pere, WI	06/26/12	06/25/12
81759	WestPoint Home New York Corporate Sales Office (Company).	New York, NY	06/27/12	06/22/12
81760	EPIC Technologies, LLC (Company)	Norwalk, OH	06/27/12	06/26/12
81761	Exopack LLC (Workers)	Seymour, IN	06/27/12	06/27/12
81762	SMC Corporation of America (Workers)	Tustin, CA	06/27/12	06/20/12
81763	Intelicoat Technologies (Union)	South Hadley, MA	06/28/12	06/27/12
81764	Schneider Electric (Union)	Peru, IN	06/29/12	06/28/12
81765	Newell Rubbermaid (Company)	Wooster, OH	06/29/12	06/14/12

[FR Doc. 2012–17374 Filed 7–17–12; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Improving Contracting Officers' Access to Relevant Integrity Information

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of Request for Comment.

SUMMARY: The Office of Federal Procurement Policy is publishing this notice to advise the public that it has developed a Request for Comment to invite comment from the public on whether changes to current regulations and other guidance might improve contracting officers' access to relevant information about contractor business ethics in the Federal Awardee Performance and Integrity Information System (FAPIIS). FAPIIS is designed to facilitate the Government's ability to evaluate the business ethics of prospective contractors and protect the Government from awarding contracts to contractors that are not responsible sources.

DATES: Interested parties should submit comments in writing to one of the addresses identified in the full notice on or before September 17, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Burnette, OFPP, at (202) 395–7724 or *rburnette@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: To access the full notice, commenters should download the PDF at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/frn/frn-access-to-relevant-integrity-information-public-comments.pdf.*

Joseph G. Jordan,

Administrator, Office of Federal Procurement Policy.

[FR Doc. 2012–17262 Filed 7–17–12; 8:45 am]

BILLING CODE 3110–01–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: August 17, 2012, 9:00 a.m.

PLACE: On board MISSISSIPPI V at Mel Price Lock & Dam, Alton, IL

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: August 20, 2012, 9:00 a.m.

PLACE: On board MISSISSIPPI V at City Front, Caruthersville, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: August 21, 2012, 9:00 a.m.

PLACE: On board MISSISSIPPI V at Mud Island, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: August 22, 2012, 1:00 p.m.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: August 24, 2012, 9:00 a.m.

PLACE: On board MISSISSIPPI V at Cenac Towing Dock, Houma, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District, and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

George T. Shepard,

Colonel, EN, Secretary, Mississippi River Commission.

[FR Doc. 2012–17568 Filed 7–16–12; 4:15 pm]

BILLING CODE 3720–58–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of

records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 17, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0009, 1 item, 1 temporary item). Master files of an electronic information system used to review national coverage determinations of claimants from clinical trials.

2. Department of Health and Human Services, Indian Health Service (DAA–0513–2012–0005, 1 item, 1 temporary item). Master files of an electronic information system containing data on educational loan repayments for agency employees.

3. Department of Health and Human Services, Indian Health Service (DAA–0513–2012–0007, 1 item, 1 temporary item). Master files of an electronic information system containing audit tracking data.

4. Department of Justice, Civil Division (DAA–0060–2011–0018, 2 items, 1 temporary item). Informational copies of data printed or extracted from an electronic information system used to manage case-related information in the litigating section. Proposed for permanent retention are the master files.

5. Department of State, Bureau of Diplomatic Security (DAA–0059–2011–0011, 3 items, 3 temporary items). Records of the Office of Domestic Operations, including requests for action, information memorandums, interagency and intra-agency agreements, and copies of Congressional inquiry responses and testimony.

6. Department of the Treasury, Financial Management Service (N1–425–09–3, 9 items, 7 temporary items). Records of financial reporting and accounting. Proposed for permanent retention are significant policy files and consolidated reports.

7. Department of the Treasury, Internal Revenue Service (N1–58–11–10, 7 items, 7 temporary items). Master files and system documentation of electronic information systems used to deliver and track staff training.

8. Federal Trade Commission, Agency-wide (N1–122–98–2, 8 items, 5 temporary items). Background materials of industry-wide investigations, mergers, acquisitions, and other projects; economic studies of the optometry and insurance industries; and litigation file duplicates.

Proposed for permanent retention are investigation indices, history sheets with case file abstracts, and congressional legislation files.

9. National Aeronautics and Space Administration, Agency wide (DAA–0255–2012–0003, 1 item, 1 temporary item). Records supporting the existence, ownership, value, disposition, and accounting classification of real and personal property assets. Included are copies of general accounting ledgers, expenditure accounting posting and control files, and records documenting acquisition of real property.

Dated: July 10, 2012.

Paul M. Wester, Jr.

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–17443 Filed 7–17–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: Monday, July 23, 2012, 2:30 p.m.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim Appeal. Closed pursuant to Exemption (6).
2. Consideration of Supervisory Activities (2). Closed pursuant to exemptions (8), (9)(i)(B) and 9(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2012–17640 Filed 7–16–12; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: ChemMatCARS Site Visit, 2011 Awardees by NSF Division of Chemistry (1191).

Dates & Times: July 23, 2012; 8:00 a.m.–6:00 p.m.; July 24, 2012; 8:00 a.m.–5:00 p.m.

Place: ChemMatCARS, 9700 S. Cass Avenue, Argonne, IL 60439.

Type of Meeting: Part-open.

Contact Person: Dr. Carlos Murillo, Program Director, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4970.

Purpose Of Meeting: To evaluate and give recommendations on the progress and the direction of research and other activities of the ChemMatCARS award to determine further NSF support.

Agenda:

Monday, July 23, 2012

8:00 a.m.–9:30 a.m. Closed—Panel Briefing and Discussion
9:30 a.m.–11:45 a.m. Open—Presentations, Discussion, and Q&A
11:45 a.m.–1:00 p.m. Closed—Lunch/Panel Discussion
1:00 p.m.–3:15 p.m. Open—Presentations, Discussion and Q&A
3:15 p.m.–6:00 p.m. Closed—Panel Discussion

Tuesday, July 24, 2012

8:00 a.m.–8:30 a.m. Closed—Panel Discussion
8:30 a.m.–10:45 a.m. Open—Presentations, Discussion and Q&A
10:45 a.m.–12:00 p.m. Closed—Lunch/Panel Discussion
12:00 p.m.–1:45 p.m. Open—Presentations, Discussion and Q&A
2:15 p.m.–5:00 p.m. Closed—Panel Discussion

Reason for Late Notice: Due to unforeseen administrative complications and the necessity to proceed with the review of the proposal.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 13, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–17435 Filed 7–17–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meetings

DATE: Weeks of July 16, 23, 30, August 6, 13, 20, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of July 16, 2012

There are no meetings scheduled for the week of July 16, 2012.

Week of July 23, 2012—Tentative

There are no meetings scheduled for the week of July 23, 2012.

Week of July 30, 2012—Tentative

There are no meetings scheduled for the week of July 30, 2012.

Week of August 6, 2012—Tentative

Tuesday, August 7, 2012

9:30 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: John Monninger, 301–415–0610.)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of August 13, 2012—Tentative

There are no meetings scheduled for the week of August 13, 2012.

Week of August 20, 2012—Tentative

There are no meetings scheduled for the week of August 20, 2012.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: July 12, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–17571 Filed 7–16–12; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2012–31; Order No. 1399]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Every Door Direct Mail–Retail (EDDM–R) to the market dominant product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are due:* July 30, 2012; *Reply Comments are due:* August 6, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION: On July 10, 2012, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* to modify the Mail Classification Schedule (MCS) by adding Every Door Direct Mail–Retail (EDDM–R) to the market dominant product list and establishing the classification language and price for EDDM–R.[1]

The Postal Service explains that EDDM–R is a Standard Mail experimental product currently in market test status in Docket No. MT2011–3.[2] The Postal Service states that the EDDM–R market test has successfully simplified mail entry by reducing complexity and cost and has enabled businesses to communicate by mail at a low cost within their target marketing areas. Request at 2.

According to the Postal Service, EDDM–R mail must meet the same preparation requirements as the Simplified Address option for Standard Mail Saturation Mail, be flat-shaped, and weigh no more than 3.3 ounces. *Id.* at 1. EDDM–R mailings do not require a permit or mailing fee, must be entered and paid for at a local Destination Delivery Unit (DDU), and must not exceed 5,000 pieces per ZIP Code served by the DDU. *Id.* If the Request is approved by the Commission, EDDM–R will continue to be classified as a market dominant Standard Mail product. *Id.* at 2.[3]

As required by 39 CFR 3020.31, the Postal Service indicates that EDDM–R is not a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products; that EDDM–R will not be a product that is not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; and that EDDM–R is not a non-postal product. Request at 2 n.1. The Postal Service also states that because EDDM–R is a market dominant product, its addition to the MCS does not require a Governors' Decision. *Id.*

Included as Attachment A to the Request is proposed MCS language. Included as Attachment B is a Statement of Supporting Justification which, among other things, addresses operational impacts and cost information requested by the Commission in Order No. 687 and Order No. 1164.[4]

Pursuant to rule 3020.33, the Commission provides interested persons an opportunity to express views and offer comments on the proposed addition to the Mail Classification Schedule. Comments are due no later than July 30, 2012. Reply comments may be filed no later than August 6, 2012. The Postal Service's Request in Docket No. MC2012–31 can be accessed on the Commission's Web site (*http://www.prc.gov*).

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

It is ordered:

1. Docket No. MC2012–31 is established to consider the Postal Service Request referred to in the body of this order.

2. Comments are due no later than July 30, 2012.

3. Reply comments are due no later than August 6, 2012.

4. The Commission appoints Kenneth E. Richardson as Public Representative to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–17398 Filed 7–17–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Every Door Direct Mail—Retail to the Mail Classification Schedule, July 10, 2012 (Request).

[2] Docket No. MT2011–3, Order Approving Market Test of Experimental Product—Marketing Mail Made Easy, March 1, 2011, at 1 (Order No. 687). As proposed in Docket No. MT2011–3, the experimental product was named ''Marketing Mail Made Easy'' (MMME). The Postal Service has renamed that product ''Every Door Direct Mail-Retail.''

[3] The experimental product being tested in Docket No. MT2011–3, MMME (see n.2, supra) is, like EDDM–R, a market dominant product. Order No. 687 at 1.

POSTAL REGULATORY COMMISSION

[Docket No. MC2012–26; Order No. 1401]

Post Office Box Service Enhancements

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service pleading concerning service enhancements introduced at certain competitive post office box locations. This notice addresses procedural steps associated with the filing.

DATES: *Comments are due:* July 31, 2012; *Reply Comments are due:* August 8, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In Docket No. C2012–1, the Associated Mail and Parcel Centers, the National Alliance of Retail and Ship Centers, and 11 additional organizations (Complainants) jointly filed a complaint with the Commission concerning the Postal Service's introduction of enhanced services that it offers to post office box customers at certain retail locations.[1] The Postal Service filed a motion to dismiss the Complaint.[2]

In Order No. 1366, the Commission denied the Motion to Dismiss as to Complainants' claims under sections 3633 and 3642, and gave the Postal Service the option of making an elective filing under 39 CFR 3020.30, concerning the enhancements to its competitive Post Office Box service.[3] The Commission ordered that the Complaint be held in abeyance until July 9, 2012, to permit the Postal Service to make the elective filing. This docket was established as a placeholder for the Postal Service's elective filing. *Id.*

On July 9, 2012, pursuant to 39 CFR 3020.30 *et seq.,* the Postal Service filed an elective pleading designed to provide the Commission with additional information to aid in its review of service enhancements that the Postal Service introduced at certain competitive post office box locations.[4] The Response, which summarizes the

[4] Docket No. MT2011–3, Order Granting Request for Exemption from Annual Revenue Limitation, January 23, 2012 (Order No. 1164).

[1] Complaint Regarding Postal Service Offering Enhanced Services Product for Competitive PO Boxes, March 15, 2012 (Complaint).

[2] Motion of the United States Postal Service to Dismiss Complaint, April 4, 2012 (Motion to Dismiss).

[3] Docket No. C2012–1, Order on Motion to Dismiss Holding Complaint in Abeyance Pending Further Proceeding, June 13, 2012, at 15 (Order No. 1366).

[4] Response of the United States Postal Service to Order No. 1366, July 9, 2012 (Response).

procedural history of the proceeding, includes three attachments. Attachment A discusses the service enhancements' compliance with the requirements listed in 39 CFR 3020.31. Attachment B provides a statement of supporting justification addressing the criteria set forth in 39 CFR 3020.32. Attachment C is a copy of the customer agreement for Post Office Box service which describes the service enhancements and explains the customer's responsibilities.

II. Notice of Filings

Pursuant to Commission Order No. 1366, Docket No. MC2012–26 has been established to consider the Postal Service's filing under 39 CFR 3020.30.

Interested persons may submit comments on issues raised by the Response, including its consistency with the policies of 39 U.S.C. 3633 and 3642, 39 CFR 3015.4, and 39 CFR part 3020, subpart B. Comments are due no later than July 31, 2012. Reply comments may be filed no later than August 8, 2012.

The Response and all filings in this proceeding and Docket No. C2012–1 can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Robert N. Sidman to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. Comments concerning the Postal Service's filing are due no later than July 31, 2012.

2. Reply comments are due no later than August 8, 2012.

3. Pursuant to 39 U.S.C. 505, Robert N. Sidman is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–17457 Filed 7–17–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67419; File No. SR–NYSEArca–2012–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the NYSE Arca Options Fee Schedule To Increase the Posted Liquidity Credit for Market Makers

July 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') to increase the posted liquidity credit for Market Makers who achieve certain average electronic execution thresholds per day in Penny Pilot issues, including an additional credit for posting liquidity in options on the SPDR S&P 500 ETF (''SPY''), and to amend the fees for certain broker-dealer transactions. The Exchange proposes to make the changes operative on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the posted liquidity credit for Market Makers who achieve certain average electronic execution thresholds per day in Penny Pilot issues,[3] including an additional credit for posting liquidity in options on SPY, and to amend fees for certain broker-dealer transactions.

Penny Pilot Issues

Currently, Market Makers receive a $0.32 per contract credit for posted electronic executions in Penny Pilot issues, regardless of the number of electronic executions per day. The Exchange proposes to increase the credit for posted electronic executions based on certain volume thresholds in Penny Pilot issues, with an additional credit for posted electronic executions in SPY, as follows:

Tier	Qualification basis (average electronic executions per day)	Credit applied to posted electronic market maker executions in penny pilot issues (except SPY)	Credit applied to posted electronic market maker executions in SPY
Base		($0.32)	($0.34)
Tier 1	30,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues.	($0.34)	($0.36)
Tier 2	80,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues.	($0.38)	($0.40)
Tier 3	150,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues.	($0.40)	($0.42)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on December 31, 2012. *See* SR–NYSEArca–2012–65.

For example, if a Market Maker has average electronic executions per day of 40,000 contracts from posted orders in Penny Pilot issues, the Market Maker would receive a credit of $0.34 per contract for posted electronic executions in non-SPY Penny Pilot issues, and a credit of $0.36 per contract for posted electronic executions in SPY.

Manual Broker-Dealer Fees

Currently, broker-dealers are charged a fee of $0.25 per contract for manual standard executions. There is no charge for Customer [4] electronic executions in non-Penny Pilot issues or Customer manual executions or a manual Firm facilitation [5] of a Customer order. The Exchange believes that a transaction in which a broker-dealer clearing in the customer range facilitates a Customer order should be treated in the same manner as a manual Firm Facilitation transaction, and therefore proposes that there be no charge for such transactions under the Fee Schedule. On occasion, broker-dealers will facilitate orders on behalf of Customers. The broker-dealer may or may not be an Options Trading Permit (''OTP'') Holder or OTP Firm, but places both the Customer order and the broker-dealer's order with a Floor Brokerage firm for execution in open outcry. If, for instance, the broker-dealer is executing on behalf of its foreign subsidiary, the order will be marked as broker-dealer but must clear in the customer range at OCC. To qualify for the free execution, the broker-dealer's proprietary trade must be handled by an OTP Holder or an OTP Firm on an agency basis and the broker-dealer and the Customer must both clear through the same clearing firm.

Fee Cap

Currently, there is a $75,000 per month fee cap on Firm manual executions, which excludes Strategy Executions, Royalty Fees, and firm trades executed via a Joint Back Office agreement.[6] The Exchange proposes also to apply the same $75,000 cap (with the same exclusions) on broker-dealer fees for manual executions clearing in the customer range. For example a broker-dealer who trades in the customer range and does not have a Customer on the contra side of the manual transaction would continue to be subject to a $0.25 manual broker-dealer charge. In said instances, those trades would continue to get billed at the $0.25 rate but would benefit from the new $75,000 cap.

The Exchange proposes to make all of the changes described above operative on July 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the increase in credits for Market Makers' posted electronic executions in Penny Pilot issues and SPY is reasonable because it would incent Market Makers to post higher volumes on the Exchange, which will promote liquidity. In addition, the increased credit for electronic executions in SPY is reasonable because it is comparable to rate differentials applied to certain symbols offered on at least one other exchange,[9] and it will attract additional order flow in SPY to the Exchange. Moreover, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to pay Market Makers a higher credit because Market Makers have higher obligations than other market participants, and the Exchange would allocate the higher credit to Market Makers that make significant contributions to market quality by providing more liquidity at the National Best Bid and Offer.

The Exchange believes that not charging a broker-dealer that clears in the customer range for facilitating a Customer order is reasonable because it will encourage this type of broker-dealer to facilitate Customer orders and increase participation in open outcry, which will in turn promote liquidity on the Exchange. In addition, the proposed rule change is reasonable, equitable, and not unfairly discriminatory because broker-dealers facilitating Customer orders that clear in the customer range are performing essentially the same business as Firm facilitation orders, in addition to maintaining Customer margin on the account, and it is open to all broker-dealers on an equal basis.

The Exchange also believes that including broker-dealer transactions that clear in the customer range in the $75,000 limit on fees for open outcry transactions for both Firms and broker-dealers is reasonable, equitable, and not unfairly discriminatory because broker-dealers entering orders that clear in the customer range are performing essentially the same business as Firm proprietary orders, in addition to maintaining Customer margin on the account.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] The term ''Customer'' excludes a broker-dealer. See NYSE Arca Rule 6.1A(a)(4).

[5] The term ''Firm'' means a broker-dealer that is not registered as a dealer-specialist or market maker on a registered national securities exchange or association. *See* NYSE Arca Rule 6.1(b)(36). The fee for a manual Firm Facilitation transaction applies to any transaction involving a Firm proprietary trading account that has a customer of that same Firm on the contra side of the transaction. *See* endnote 7 of the Fee Schedule.

[6] The Fee Schedule currently does not specify that such cap is applied monthly; the Exchange proposes to specify that in the Fee Schedule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* NASDAQ OMX PHLX LLC Pricing Schedule as of June 1, 2012, Rebates and Fees for Adding and Removing Liquidity in Select Symbols, *available at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–71 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17418 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67420; File No. SR–NYSEMKT–2012–17]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule for Professional Customers and Broker-Dealers To Increase the Transaction Fee for Electronic Executions and Introduce Volume-Based Tiers for Certain Electronic Executions That Would Be Charged a Lower per Contract Rate

July 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') for Professional Customers and Broker-Dealers to increase the transaction fee for electronic executions and introduce volume-based tiers for certain electronic executions that would be charged a lower per contract rate. The proposed rule change will be operative on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for Professional Customers and Broker-Dealers to increase the transaction fee for electronic executions and introduce volume-based tiers for certain electronic executions that would be charged a lower per contract rate.

Specifically, the Exchange proposes to increase the per contract transaction fee for electronically executed orders for Professional Customers and Broker-Dealers from $.23 and $.20, respectively, to $.28 per contract for both categories of market participant.[3] The Exchange notes that the proposed fee is within the range of Professional Customer fees presently assessed in the industry, which range from $.20 per contract for non-Select Symbols on the International Securities Exchange (''ISE'')[4] to $.50 per contract to take liquidity on The NASDAQ Options Market (''NOM'') for non-Penny Pilot securities.[5] Similarly, the proposed fee for electronic Broker-Dealer transactions is within the range of fees assessed in the industry, which range from $.20 to add liquidity in Complex Orders on NASDAQ OMX

[3] In March 2012, the Exchange increased the per contract execution costs for certain participants. *See* Securities Exchange Act Release No. 66561 (Mar. 9, 2012), 77 FR 15429 (Mar. 15, 2012) (SR–NYSEAmex–2012–16). However, the Exchange inadvertently did not increase Broker-Dealer fees to the same level as Professional Customer fees, as required by the definition of Professional Customer in Rule 902.NY(18A), which provides that Professional Customer and Broker-Dealer fees must be the same. The proposed change would make the fees for Professional Customers and Broker-Dealers the same level, as they were prior to March 2012.

[4] *See* ISE fee schedule dated June 1, 2012, *available at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf.*

[5] *See* NOM Fee Schedule, *available at http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing.*

PHLX to $.60 to transact in non-Penny Pilot securities on NASDAQ OMX PHLX.[6]

At the same time, the Exchange proposes to establish volume-based tiers for Professional Customers and Broker-Dealers that take liquidity on the Exchange.[7] Upon achieving these volume tiers, they will automatically become eligible for a lower per contract rate on all of their electronic executions in that month irrespective of whether those executions resulted from taking or making liquidity. The proposed volume-based tiers and associated rates per contract are shown below.[8]

Average daily volume tiers for professional customers and broker-dealers taking liquidity	Rate per contract
0 to 50,000	$.28
50,001 to 100,000	.26
Over 100,000	.23

Thus, for Professional Customers that have average daily volume of over 100,000 contracts, the fee per contract will remain the same as it currently is at $.23.

In addition, the Exchange proposes to amend the Fee Schedule to clarify that the ''Broker Dealer Manual'' fee and ''Professional Customer Manual'' fee are the same.

The proposed change will be operative on July 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[9] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4)[10] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and is not unfairly discriminatory.

Specifically, the Exchange believes that the proposed fee increase for certain electronically executed orders on behalf of Professional Customers and Broker-Dealers is equitable and reasonable because it will help offset the Exchange's costs in processing the relatively higher volume of orders, many of which do not execute, that are being submitted to the Exchange by Professional Customers and Broker-Dealers.[11] Rather than passing the costs of higher order volumes along to all participants, the Exchange believes it is more equitable to assess those costs to the participants that are responsible for them.[12]

The Exchange notes that other participants pay substantially more for the ability to trade on the Exchange and, as such, the proposed amount of the increase is reasonable. For example, Market Makers have much higher fixed monthly costs as compared to Professional Customers and Broker-Dealers. A Market Maker seeking to stream quotes in the entire universe of names traded on the Exchange would have to pay $20,000 per month in Amex Trading Permit (''ATP'') fees. In addition, a Market Maker acting as a Specialist, e-Specialist, or Directed Order Market Maker will incur monthly Rights Fees that range from $75 per option to $1,500 per option. Professional Customers and Broker-Dealers, who access the Exchange via an order routing firm, pay only $500 per month in ATP fees (assuming the cost is passed back to them), and for that low monthly cost are able to send orders in all issues traded on the Exchange.[13] For Broker-Dealers who are ATP Holders and do access the Exchange directly, they will incur the monthly ATP fee of $500 and in turn have the ability to send orders in all issues traded on the Exchange. Other participants have a much higher per contract cost to trade on the Exchange, such as Non-NYSE Amex Options Market Makers, who pay $.43 per contract to transact on the Exchange electronically. Given these facts, coupled with the aforementioned range in Professional Customer and Broker-Dealer fees on other exchanges, the Exchange believes that the proposed increase is both reasonable and equitable.

The Exchange further notes that Broker-Dealers and Professional Customers may directly compete with Market Makers; unlike Customers, they are not prohibited from de facto market making.[14] Both Broker-Dealers and Professional Customers have a measurable economic advantage relative to a NYSE Amex Options Market Maker's cost when trading with Customer order flow. For example, an NYSE Amex Options Market Maker trading against a Customer order in a non-Penny Pilot name will pay as much as $.85 in transaction charges, whereas under the proposal, both Broker-Dealers and Professional Customers will pay a maximum of $.28 per contract.[15] The proposed fee increase will diminish the maximum per contract differential between Market Makers with quoting obligations who trade against Customers versus Broker-Dealers and Professional Customers who do not have such obligations and who may trade electronically against Customers in a manner that the Exchange believes is more equitable in light of the differing roles such participants play on the Exchange and the attendant costs, benefits, and obligations.

The Exchange believes the proposed change to increase fees as high as $.28 per contract for lower volume Professional Customer and Broker-Dealer participants is not unfairly discriminatory as the change will apply to all Professional Customers and Broker-Dealers equally. Further, Professional Customers and Broker-Dealers are free to change the manner in which they access the Exchange. A Professional Customer may, by sending fewer than 390 orders per day across the industry, begin participating as a

[6] *See* NASDAQ OMX PHLX Fee Schedule, *available at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[7] Whenever a participant sends a marketable order to immediately trade against a resting bid or offer in the Exchange's Consolidated Order Book, it will be viewed as taking liquidity. Conversely, whenever a participant posts a bid or offer that does not immediately execute they will be viewed as making liquidity on the Exchange.

[8] The average daily volume will be calculated by taking the sum total of a Professional Customer's or Broker-Dealer's taking liquidity volume and dividing it by the number of days the Exchange was open for business during the month. Any electronic volumes that arise from the execution of either Complex Orders or Qualified Contingent Cross (''QCC'') orders will not be included in the calculation of average daily volume. QCC orders will remain subject to the current $.20 per contract pricing in the Fee Schedule applicable to non-Customers.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] The Exchange does not believe that the costs associated with this increased volume are fully addressed through the Exchange's existing fee structure. Cancellation fees only apply to public customer orders, the messages-to-contracts ratio fee only applies after 1 billion messages, and the order-to-trades ratio fee only applies after the ratio reaches 10,000 orders to 1 execution.

[12] At this time, the Exchange is leaving in place current rate of $.20 per contract for Firms because unlike Professional Customers and Broker-Dealers, the majority of Firm volumes are transacted in open outcry or manually, and de facto market making activity by Firm participants is very limited.

[13] The Exchange notes that it has proposed to increase the ATP fees for an order routing firm from $500 per month to $1,000 per month effective July 1, 2012. *See* SR–NYSEMKT–2012–16.

[14] *See* Rule 995NY(b).

[15] NYSE Amex Options Market Makers must pay marketing charges of $.65 per contract when they trade contra to a Customer order electronically. This is in addition to the Exchange transaction fee of $.20 per contract applicable to a NYSE Amex Options Market Maker. The Exchange notes that the marketing charges are used by NYSE Amex Options Market Makers to attract Customer order flow to the Exchange. Such order flow is beneficial to all participants on the Exchange, including Broker-Dealers and Professional Customers who are permitted to act as a de facto market maker by placing electronic orders on both sides of the market simultaneously.

Customer and avoid incurring any transaction fees. Additionally Professional Customers may elect to register as a Broker-Dealer and, once registered as a Broker-Dealer, may apply to become Market Makers to transact on a proprietary basis as Market Makers or become ATP Holders to transact on the Exchange as a Firm. In light of the ability to access the Exchange in a variety of ways, each of which is priced differently, Professional Customers, Broker-Dealers and other participants may access the Exchange in a manner that makes the most economic sense for them.

The Exchange believes that the proposed change to establish volume-based tiers for Professional Customers and Broker-Dealers that transact electronically is reasonable, equitable, and not unfairly discriminatory. As noted previously, they have lower aggregate fees when compared to, for example, the ATP fees incurred by a NYSE Amex Market Maker to quote the entire universe of names traded on the Exchange. Further, the establishment of the tiers will enable Professional Customers and Broker-Dealers that transact in sufficient volumes to obtain a lower per contract rate on all of their electronic volumes in a given month. This is reasonable and equitable given that a higher volume of marketable orders, which these volume tiers will encourage, is beneficial to other Exchange participants due to the increased opportunity to trade. The Exchange believes the proposed change to adopt volume-based tiers for Professional Customers and Broker-Dealers that transact electronically is not unfairly discriminatory because the change will apply to all participants in those categories equally.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they determine that such venues offer more favorable trading conditions and rates.

Finally, the Exchange believes that the amendment of the ''Broker Dealer Manual'' and ''Professional Customer Manual'' fees in the Fee Schedule is equitable and reasonable because it would result in increased clarity in the Fee Schedule regarding such fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–17 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17419 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67424; File No. SR–NYSEArca–2012–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

July 12, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 29, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule''). The Exchange proposes to implement the fee changes on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on July 1, 2012.

ETP Holders, including Market Makers, are currently eligible to qualify for the Cross-Asset Tier and the corresponding credit of $0.0030 per share for orders that provide liquidity on the Exchange. To qualify, an ETP Holder must (1) provide liquidity of 0.50% or more of the U.S. Consolidated Average Daily Volume (''CADV'') [4] per month, and (2) be affiliated with an NYSE Arca Options OTP Holder or OTP Firm that provides an average daily volume (''ADV'') of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options of at least 110,000 contracts.[5]

The Exchange proposes to decrease the CADV percentage threshold from 0.50% to 0.45% and to decrease the options ADV threshold from 110,000 contracts to 90,000 contracts. The Exchange has determined to make these changes in light of current and anticipated market conditions and believes that these changes will provide a greater incentive to attract additional equities and options liquidity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(4) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the proposed changes to the Cross-Asset Tier would directly relate to the activity of an ETP Holder and the activity of an affiliated OTP Holder or OTP Firm on the Exchange, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. The Exchange has determined to adjust the CADV and contract thresholds in light of current and anticipated market conditions and believes that these changes will provide a greater incentive to attract additional equities and options liquidity.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (f)(2) of Rule 19b–4 [7] thereunder, because it establishes [sic] a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[4] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

[5] An affiliate of an ETP Holder would be a person or firm that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the ETP Holder. *See* NYSE Arca Equities Rule 1.1(b). As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on December 31, 2012. *See* SR–NYSEArca–2012–65.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSEArca's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–70 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17481 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67421; File No. SR–NYSEAmex–2012–31]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Defining a Primary Specialist in Each Options Class and Modifying the Specialist Entitlement Accordingly

July 12, 2012.

I. Introduction

On May 11, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to define a Primary Specialist in each options class and modify the Specialist entitlement. The proposed rule change was published for comment in the **Federal Register** on May 31, 2012.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rules 964NY and 964.2NY to define Primary Specialists, and to modify the order allocation entitlement amongst Specialist Pool participants.

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the NYSE Amex System. Under the current rule, the priority for the allocation of incoming orders at the same price is as follows: (1) resting Customer orders; (2) Directed Order Market Makers, provided they satisfy the criteria to be eligible to receive a Directed Order; (3) the Specialist Pool (for non-Directed Orders); and (4) non-Customer interest (on a size pro-rata basis). As currently provided in Rule 964NY(b)(2)(C) and Rule 964.2NY, the Specialist and e-Specialists in each class compete in the Specialist Pool on a size pro-rata basis, and do not compete for the allocation of non-Directed Orders of five contracts or fewer.[4] Such orders are allocated on a rotating basis (i.e., a round robin) to a Specialist or e-Specialist in the Specialist Pool.

The Exchange now proposes to designate a Primary Specialist from amongst the Specialist Pool participants. According to the Exchange, the Primary Specialist will be determined using objective evaluation of the relative quote performance of each Specialist and e-Specialist. The evaluation will be conducted on a quarterly basis and would include one or more of the following factors: time and size at the NBBO, average quote width, average quote size, and the relative share of electronic volume in a given class of options.[5] The Exchange will issue a Regulatory Bulletin at least five business days prior to each evaluation period with the evaluation criteria, including the relative weighting of each factor.

Under the proposed rule change, the Primary Specialist (instead of the Specialist) would receive any additional weighting in the size pro rata allocation amongst Specialist Pool participants. This additional weighting would be determined by the Exchange, as is currently the case. Additionally, under the proposal, rather than a round robin allocation of non-Directed Orders for five contracts or fewer, all such orders would be allocated to the Primary Specialist after any allocation to Customers, not to exceed the size of the Primary Specialist's quote, provided the Primary Specialist is quoting at the NBBO. If the Primary Specialist's quote size is less than the order of five contracts or fewer, any remaining contracts after the Primary Specialist receives its allocation will be allocated in accordance with Rule 964NY(b)(2)(D) (i.e., size pro rata). In addition, as is the case under the current rule for the Specialist Pool, if the Primary Specialist is not quoting at the NBBO at the time the order for five or fewer contracts arrives, then the order will be executed in accordance with the provision of Rule 964NY(b)(2)(D).[6]

The Exchange stated that it will not implement this proposal until it has notified ATP Holders via Regulatory Bulletin regarding the rule change. The Exchange plans to issue notice announcing the compliance date of the rule change within 90 days from the effective date of the rule change.[7]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Commission closely scrutinizes exchange rule proposals to adopt or amend participation guarantees where such guarantees would rise to a level that could have a material adverse impact on quote competition within a particular exchange.[10] As noted by the Exchange, the proposed rule change is intended to enhance quote competition

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67057 (May 24, 2012), 77 FR 32157 (''Notice'').

[4] Under the rule, the Specialist's pro-rata allocation may receive additional weighting as determined by the Exchange.

[5] The first evaluation period may be longer or shorter than a calendar quarter, depending on Commission approval of the proposed rule change.

[6] The Exchange is also proposing to correct a typographical error in Rule 964.2NY(b)(3)(A) by changing the word ''on'' to ''one.''

[7] *See* Notice, *supra* note 3, at 32158.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 44641 (August 2, 2001), 66 FR 41643 (August 8, 2001) (SR–ISE–2001–17), at 41644–41645; *see also* Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR–ISE–2005–18), at 35149.

among the Specialist Pool participants by creating a quarterly contest designed to measure the quote performance of Specialists and eSpecialists. The Exchange states that the determination of the winner of this quarterly contest will be based on objective evaluation of the relative quote performance of each Specialist and eSpecialist and the evaluation criteria will be announced in advance of each evaluation period. The Exchange notes that enhanced quote competition should lead to narrower spreads and more liquid markets, thereby benefiting investors. Further, notes the Exchange, narrower spreads and more liquid markets should attract more order flow to the exchange, enhancing price discovery and generally benefiting all participants on the Exchange. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSEAmex–2012–31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17420 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67422; File No. SR–BYX–2012–013]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

July 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 8, 2012, BATS Y-Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[3] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to: (i) Accommodate an additional venue as part of the Exchange's ''TRIM'' routing strategy; and (ii) commence charging for logical ports used to enter orders into Exchange systems and to receive data from the Exchange. Each of these proposed changes is described in further detail below.

(i) TRIM Routing Strategy

The Exchange proposes to modify its fee schedule in order to accommodate an additional venue as part of the Exchange's ''TRIM'' routing strategy. As defined in BYX Rule 11.13(a)(3)(G), TRIM is a routing option under which an order checks the System[4] for available shares and then is sent to destinations on the System routing table. The TRIM routing strategy is focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange's routing table. Accordingly, the Exchange's current TRIM routing strategy will check the Exchange's order book and then route to various venues on the Exchange's routing table, including NASDAQ OMX BX, Inc. (''NASDAQ BX''), EDGA EXCHANGE, Inc. (''EDGA''), the New York Stock Exchange LLC (''NYSE''), BATS Exchange, Inc. (''BZX Exchange'') and certain alternative trading systems available through the Exchange's ''DRT'' strategy (''DRT Venues'').[5] As of July 2, 2012, the Exchange plans to add an additional execution venue, NASDAQ OMX PSX (''NASDAQ PSX''), to the TRIM routing strategy. The TRIM routing strategy generally passes the same execution fee assessed by the applicable market center back to Exchange Users.[6] In order to add NASDAQ PSX to the TRIM routing strategy, the Exchange is proposing to adopt pricing for executions through the TRIM routing strategy of orders routed to NASDAQ PSX.

Based on a recently filed proposal, as of July 2, 2012, NASDAQ PSX does not assess any charge to remove liquidity from its order book for participants that reach certain volume tiers.[7] Because the Exchange anticipates being able to reach such tiers based on its routing practices, the Exchange proposes neither to assess any fee nor to provide any rebate for TRIM orders that remove liquidity from NASDAQ PSX.

(ii) Logical Port Fees

The Exchange also proposes to commence charging fees to Members and non-members for logical ports used to enter orders into Exchange systems and to receive data from the Exchange. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port

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[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] As defined in BYX Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[5] As set forth in BYX Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

[6] As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. A Sponsored Participant is a firm that is sponsored by a Member of the Exchange to access the Exchange and that meets the criteria of Exchange Rule 11.3.

[7] *See* SR–Phlx–2012–87 (June 27, 2012). This proposal was recently filed and will become operative on July 2, 2012.

established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

In contrast to its affiliate, BZX Exchange, and most of its competitors, the Exchange currently provides logical ports free of charge to Members and non-members that have access to or receive data from the Exchange. Pursuant to the proposed rule change, the Exchange will begin charging a monthly fee for ports used to enter orders in the Exchange's trading system and to receive data from the Exchange. The Exchange proposes to charge $400.00 per month per pair [8] of any port type other than a Multicast PITCH Spin Server Port or a GRP Port. Thus, this proposed charge will apply to all Exchange FIX, FIXDROP, BOE, DROP, TCP PITCH, and TOP ports. In addition, the Exchange proposes to provide all Exchange constituents that receive the Exchange's Multicast PITCH Feed with 32 Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports. The Exchange proposes to charge such customers $400.00 per month per additional pair of GRP Ports or additional set of 32 Multicast PITCH Spin Server Ports. The Exchange's proposal to provide certain ports free of charge to Multicast Pitch customers is designed to encourage use of the Exchange's Multicast PITCH Feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients. The Exchange has previously provided ports free of charge to all Members and non-members that use such ports for order entry to the Exchange or for receipt of market data. However, over time, the Exchange's infrastructure costs have increased. In addition, the Exchange believes that providing ports free of charge has not encouraged Members and non-members to reserve and maintain ports efficiently, but rather, has led to a significant number of ports that are reserved and enabled by such market participants but are never used or are under used. Accordingly, the Exchange believes that the imposition of port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange. The Exchange also notes that its affiliated national securities exchange, BZX Exchange, charges for ports to access its cash equity securities platform on exactly the same terms as are proposed herein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange also notes that with respect to the routing changes proposed in this filing, although routing options are available to all Users, Users are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different venues or can utilize a myriad of other routing solutions that are available to market participants.

The Exchange believes that the proposed fee for executions at NASDAQ PSX under the TRIM routing option is reasonable in that it is the same fee as the fee charged directly by NASDAQ PSX, as described above. As such, the Exchange believes that the proposed routing fee is competitive, fair and reasonable, and non-discriminatory in that it is generally designed to mirror the fee applicable to the execution if such routed orders were executed directly by the Member at NASDAQ PSX. The Exchange also believes that the proposed fees for the TRIM routing strategy are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange Users.

The Exchange believes that its proposed logical port fees are reasonable in light of the benefits to Members of direct market access and receipt of data, which data, other than the proposed logical port fee, is currently provided free of charge. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange or receive data from the Exchange. The Exchange believes that its fees for access services will enable it to better cover its infrastructure costs and to improve its technology and services.

The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the offering of free logical ports is fair and equitable. The Multicast PITCH data feed is available to all Members, and as such, all Members have the ability to receive applicable Multicast PITCH ports free of charge. Based on the foregoing, the Exchange believes that the proposed pricing structure for logical ports is not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange will not assess any routing fee for orders routed to NASDAQ PSX, consistent with NASDAQ PSX pricing. The Exchange also notes that Users may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[11] With respect to port fees, fees for access to the Exchange will be a component of the overall fees charged by the Exchange to execute and route orders through the Exchange. As the Commission has

[8] Each pair of ports will consist of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See, e.g.,* BYX Rule 11.9(c)(4) (describing ''BATS Only'' orders) and BYX Rule 11.13(a)(2) (describing the routing process, which is dependent on User instruction).

recognized, the market for execution and routing services is extremely competitive.[12] Market participants that choose not to connect directly to the Exchange can readily access liquidity available on the Exchange by directing their order flow to other venues that, under Regulation NMS, must route to the Exchange if it has posted the best price. Accordingly, the Exchange must set its fees, including access service fees, at a level that will not deter market participants from connecting to the Exchange; otherwise, potential users of the Exchange's services will simply direct order flow to the Exchange's multiple competitors. In addition, the Exchange believes that the proposed port fees are consistent with or less than the port fees charged by its competitors. With respect to market data, the Exchange does not currently charge any fees for such data. Although it will now begin imposing a fee related to access to such data, for market participants that receive such data directly from the Exchange, the Exchange believes that its free provision of data justifies such market participants paying some amount in order to help the Exchange offset the infrastructure costs of providing such data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2) thereunder,[14] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BYX–2012–013 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17421 Filed 7–17–12; 8:45 am]

BILLING CODE 8011–01–P

[12] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13107 and #13108]

Florida Disaster #FL–00072

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4068–DR), dated 07/09/2012.

Incident: Tropical Storm Debby.

Incident Period: 06/23/2012 and continuing.

Effective Date: 07/09/2012.

Physical Loan Application Deadline Date: 09/07/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baker; Charlotte; Citrus; Clay; Columbia; Dixie; Franklin; Gulf; Hamilton; Hernando; Jefferson; Lafayette; Liberty; Manatee; Nassau; Pasco; Sarasota; Suwannee; Union; Wakulla.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13107B and for economic injury is 13108B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–17394 Filed 7–17–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Accretive Investors SBIC, L.P.; License No. 02/72–0627]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Accretive Investors SBIC, L.P., 55 East 59th Street 22nd Floor, New York, NY 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Accretive Investors SBIC, L.P. proposes to provide debt financing to 2007 Apollo Holding Corp. which owns 100% of the outstanding stock of operating company AlphaStaff Group, Inc., 800 Corporate Drive, Suite 800, Fort Lauderdale, FL 33301.

The financing is brought within the purview of § 107.730 of the Regulations because Accretive II, LP and Accretive II Coinvestment, L.P., Associates of Accretive Investors SBIC, L.P., each own more than ten percent of Apollo Holding Corp. Also, the proposed investment by Accretive Investors SBIC, L.P. will be part of a larger pool of funds that will relieve a potential funding obligation of Accretive II GP, LLC, which is an Associate of Accretive Investors SBIC, L.P.

Therefore, this transaction is considered a financing of an Associate and a self-deal pursuant to 13 CFR 107.730 and requires an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: July 9, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–17446 Filed 7–17–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Ascent Venture Partners IV–A, L.P., License No. 01/01–0404; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Ascent Venture Partners IV–A, L.P., 255 State Street, 5th Floor, Boston, MA 02109, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the sale of its interests in four small concerns, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Ascent Venture Partners IV–A, L.P. proposes to sell a portion of its interests in the four small concerns to a secondary buyer (''Buyer''). The Buyer will pay the management company of Ascent Venture Partners IV–A, L.P. an annual fee to monitor the assets for the Buyer.

The transaction is brought within the purview of § 107.730 of the Regulations because the management company of Ascent Venture Partners IV–A, L.P. is an Associate of Ascent Venture Partners IV–A, L.P.

Therefore, this transaction is considered a self-deal pursuant to 13 CFR 107.730 and requires an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: June 27, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–17516 Filed 7–17–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Ironwood Mezzanine Fund III–A, L.P., License No. 01/01–0421; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Ironwood Mezzanine Fund III–A, L.P., 55 Nod Rd, Avon, CT 06001, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Ironwood Mezzanine Fund III–A, L.P. proposes to provide debt security financing to My Alarm Center, LLC. The financing is contemplated to repay debt and redeem certain preferred equity securities.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because My Alarm Center, LLC will use part of the financing to discharge debts owed to Ironwood Mezzanine Fund II, L.P., an Associate of Ironwood Mezzanine Fund III–A, L.P. Therefore, this transaction is considered a financing of an Associate requiring an exemption.

Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Sean Greene,

Associate Administrator for Investment.

[FR Doc. 2012–17524 Filed 7–17–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0335]

Escalate Capital Partners SBIC I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Escalate Capital Partners SBIC I, L.P., 300 West 6th Street, Suite 2250, Austin, TX 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts

of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Escalate Capital Partners SBIC I, L.P. proposes to make a debt investment in Mavenir Systems, Inc., a portfolio company of its Associate Austin Ventures.

The financing is brought within the purview of § 107.730(b) of the Regulations because Escalate Capital Partners SBIC I, L.P. proposes to Finance a small business in which its Associate Austin Ventures has an equity interest of at least five percent, so the transaction that will effect the proposed Financing requires prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: July 6, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–17439 Filed 7–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Designation of Transportation Management Areas

AGENCIES: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice of designation.

SUMMARY: The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) are announcing that all urbanized areas (UZAs) with populations greater than 200,000 as determined by the 2010 Census are hereby designated as Transportation Management Areas (TMAs). The FTA and FHWA are taking this action in compliance with the agencies' authorizing statutes, 23 U.S.C. 134, and 49 U.S.C. 5303. This action supersedes the agencies' designations of TMAs made in the **Federal Register** on July 8, 2002, at 67 FR 45173.

DATES: *Effective Date:* July 18, 2012.

FOR FURTHER INFORMATION CONTACT: For FTA related questions, Charles Goodman, Office of Systems Planning (TPE–10), (202) 366–1944, email: *Charles.Goodman@dot.gov,* or Dana Nifosi, Office of Chief Counsel (TCC), (202) 366–4011, email: *Dana.nifosi@dot.gov,* Federal Transit Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours for the FTA are from 8:30 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays.

For FHWA related questions, James Cheatham, Office of Planning (HEPP), (202) 366–0106, email: *James.Cheatham@dot.gov,* or Janet Myers, Office of Chief Counsel (HCC), (202) 366–2019, email: *janet.myers@dot.gov,* Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Titles 23 and 49 of the United States Code (23 U.S.C. 134(k)(1)(A) and 49 U.S.C. 5303(k)(1)(A)) require the Secretary of Transportation to designate urbanized areas over 200,000 population as TMAs. A number of Census Bureau defined urbanized areas across the United States have recently exceeded 200,000 in population as determined by the 2010 Census. Accordingly, this notice hereby designates such areas as TMAs. Designated TMAs are subject to special planning and programming requirements. The FTA and the FHWA have developed a series of ''Questions and Answers'' related to applying 2010 Census data to Urbanized and Urban areas in the joint FTA and FHWA planning processes. More information can be found at *http://www.fhwa.dot.gov/planning/census_issues/* and *http://www.fta.dot.gov/grants/12853_12408.html*.

These requirements apply to the metropolitan planning areas that must be determined jointly by the metropolitan planning organization (MPO) and Governor, in accordance with 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). Additional urbanized areas may be designated as TMAs by the Secretary of Transportation upon request of the Governor and the MPO, or affected local officials. Notification of any additional TMAs will be issued through a Secretarial Memorandum to the appropriate State Governors and MPOs, not as a notice published in the **Federal Register**. The UZAs with populations over 200,000, which are hereby designated as TMAs, are listed below. The Santa Barbara, California urbanized area did not meet the statutory population threshold for TMA designation, but was previously designated as a TMA at the request of the MPO and Governor. The Santa Barbara urbanized area continues to be designated as a TMA as a result of the previous request.

There have been significant changes in the urbanized areas defined by the 2010 Census from those defined by the 2000 Census. These changes include new areas, based primarily on population growth, name changes, and areas with significant boundary changes. For multistate urbanized areas over 200,000 population, the urbanized area is listed under the State with the largest share of the population. However, the TMA designation applies to the entire multistate urbanized area.

The Census Bureau defined the Census 2010 urbanized areas using the criteria published in the **Federal Register** on August 24, 2011 (76 FR 53030). As a result of using these definitions, there were significant changes in the Census 2010 urbanized areas from those defined based on the 2000 census and criteria. A detailed discussion of the differences in the Census Bureau criteria from 2000 to 2010 can be found at the Census Bureau's Web site. *http://www.census.gov/geo/www/ua/2000_2010uadif.pdf*.

Authority: 23 U.S.C. 315; 23 U.S.C. 134(k)(1)(A), 49 U.S.C. 5303(k)(1)(A), 49 CFR 1.48 and 1.51.

Issued on: May 10, 2012.

Victor M. Mendez,

Administrator.

Peter Rogoff,

Administrator, FTA.

State/urbanized area (UZA)	UZA 2010 population	Area comparison to 2000 Census TMAs; population
Alabama:		
Birmingham, AL	749,495	
Mobile, AL	326,183	
Huntsville, AL	286,692	

State/urbanized area (UZA)	UZA 2010 population	Area comparison to 2000 Census TMAs; population
Montgomery, AL	263,907	New TMA.
State Total	1,626,277	
Alaska:		
Anchorage, AK	251,243	
State Total	251,243	
Arizona:		
Phoenix-Mesa, AZ	3,629,114	
Tucson, AZ	843,168	
State Total	4,472,282	
Arkansas:		
Little Rock, AR	431,388	
Fayetteville-Springdale-Rogers, AR-MO	295,083	New TMA.
State Total	726,471	
California:		
Los Angeles-Long Beach-Anaheim, CA	12,150,996	Name Change.
San Francisco-Oakland, CA	3,281,212	
San Diego, CA	2,956,746	
Riverside-San Bernardino, CA	1,932,666	
Sacramento, CA	1,723,634	
San Jose, CA	1,664,496	
Fresno, CA	654,628	
Concord, CA	615,968	
Mission Viejo-Lake Forest-San Clemente, CA	583,681	Name Change.
Bakersfield, CA	523,994	
Murrieta-Temecula-Menifee, CA	441,546	
Stockton, CA	370,583	
Oxnard, CA	367,260	
Modesto, CA	358,172	
Indio-Cathedral City, CA	345,580	Name Change.
Lancaster-Palmdale, CA	341,219	
Victorville-Hesperia, CA	328,454	Name Change.
Santa Rosa, CA	308,231	
Antioch, CA	277,634	
Santa Clarita, CA	258,653	New TMA.
Visalia, CA	219,454	New TMA.
Thousand Oaks, CA	214,811	
State Total	29,919,618	
Colorado:		
Denver-Aurora, CO	2,374,203	
Colorado Springs, CO	559,409	
Fort Collins, CO	264,465	
State Total	3,198,077	
Connecticut:		
Hartford, CT	924,859	
Bridgeport-Stamford, CT-NY	923,311	
New Haven, CT	562,839	
Norwich-New London, CT-RI	209,190	New TMA.
State Total	2,620,199	
Delaware:		
State Total.		
District of Columbia:		
Washington, DC-VA-MD	4,586,770	
State Total	4,586,770	
Florida:		
Miami, FL	5,502,379	
Tampa—St. Petersburg, FL	2,441,770	
Orlando, FL	1,510,516	
Jacksonville, FL	1,065,219	
Sarasota—Bradenton, FL	643,260	
Cape Coral, FL	530,290	
Palm Bay—Melbourne, FL	452,791	
Port St. Lucie, FL	376,047	
Palm Coast—Daytona Beach—Port Orange, FL	349,064	Name Change.
Pensacola, FL–AL	340,067	

State/urbanized area (UZA)	UZA 2010 population	Area comparison to 2000 Census TMAs; population
Kissimmee, FL	314,071	New TMA.
Bonita Springs, FL	310,298	Name Change.
Lakeland, FL	262,596	New TMA.
Tallahassee, FL	240,223	
Winter Haven, FL	201,289	New TMA.
State Total	14,539,880	
Georgia:		
Atlanta, GA	4,515,419	
Augusta—Richmond County, GA—SC	386,787	
Savannah, GA	260,677	
Columbus, GA—AL	253,602	
State Total	5,416,485	
Hawaii:		
Urban Honolulu, HI	802,459	Name Change.
State Total	802,459	
Idaho:		
Boise City, ID	349,684	
State Total	349,684	
Illinois:		
Chicago, IL—IN	8,608,208	
Rockford, IL	296,863	
Round Lake Beach—McHenry—Grayslake, IL—WI	290,373	
Peoria, IL	266,921	
State Total	9,462,365	
Indiana:		
Indianapolis, IN	1,487,483	
Fort Wayne, IN	313,492	
South Bend, IN—MI	278,165	
Evansville, IN—KY	229,351	
State Total	2,308,491	
Iowa:		
Des Moines, IA	450,070	
Davenport, IA—IL	280,051	
State Total	730,121	
Kansas:		
Wichita, KS	472,870	
State Total	472,870	
Kentucky:		
Louisville/Jefferson County, KY—IN	972,546	Name Change.
Lexington—Fayette, KY	290,263	
State Total	1,262,809	
Louisiana:		
New Orleans, LA	899,703	
Baton Rouge, LA	594,309	
Shreveport, LA	298,317	
Lafayette, LA	252,720	New TMA.
State Total	2,045,049	
Maine:		
Portland, ME	203,914	New TMA.
State Total	203,914	
Maryland:		
Baltimore	2,203,663	
Aberdeen—Bel Air South—Bel Air North, MD	213,751	New TMA.
State Total	2,417,414	
Massachusetts:		
Boston, MA—NH—RI	4,181,019	
Springfield, MA—CT	621,300	
Worcester, MA—CT	486,514	
Barnstable Town, MA	246,695	
State Total	5,535,528	

State/urbanized area (UZA)	UZA 2010 population	Area comparison to 2000 Census TMAs; population
Michigan:		
Detroit, MI	3,734,090	
Grand Rapids, MI	569,935	
Flint, MI	356,218	
Lansing, MI	313,532	
Ann Arbor, MI	306,022	
Kalamazoo, MI	209,703	New TMA.
State Total	5,489,500	
Minnesota:		
Minneapolis—St. Paul, MN—WI	2,650,890	Name Change.
State Total	2,650,890	
Mississippi:		
Jackson, MS	351,478	
Gulfport, MS	208,948	Name Change.
State Total	560,426	
Missouri:		
St. Louis, MO—IL	2,150,706	
Kansas City, MO—KS	1,519,417	
Springfield, MO	273,724	
State Total	3,943,847	
Montana:		
State Total.		
Nebraska:		
Omaha, NE—IA	725,008	
Lincoln, NE	258,719	
State Total	983,727	
Nevada:		
Las Vegas—Henderson, NV	1,886,011	Name Change.
Reno, NV—CA	392,141	Name Change.
State Total	2,278,152	
New Hampshire:		
Nashua, NH—MA	226,400	New TMA.
State Total	226,400	
New Jersey:		
Atlantic City, NJ	248,402	
Trenton, NJ	296,668	
State Total	545,070	
New Mexico:		
Albuquerque, NM	741,318	
State Total	741,318	
New York:		
New York—Newark, NY—NJ—CT	18,351,295	
Buffalo, NY	935,906	
Rochester, NY	720,572	
Albany—Schenectady, NY	594,962	Name Change.
Poughkeepsie—Newburgh, NY—NJ	423,566	Name Change.
Syracuse, NY	412,317	
State Total	21,438,618	
North Carolina:		
Charlotte, NC—SC	1,249,442	
Raleigh, NC	884,891	
Winston-Salem, NC	391,024	
Durham, NC	347,602	
Greensboro, NC	311,810	
Fayetteville, NC	310,282	
Asheville, NC	280,648	
Wilmington, NC	219,957	New TMA.
Concord, NC	214,881	New TMA.
Hickory, NC	212,195	New TMA.
State Total	4,422,732	
North Dakota:		

State/urbanized area (UZA)	UZA 2010 population	Area comparison to 2000 Census TMAs; population
State Total.		
Ohio:		
Cleveland, OH	1,780,673	
Cincinnati, OH—KY—IN	1,624,827	
Columbus, OH	1,368,035	
Dayton, OH	724,091	
Akron, OH	569,499	
Toledo, OH—MI	507,643	
Youngstown, OH—PA	387,550	
Canton, OH	279,245	
State Total	7,241,563	
Oklahoma:		
Oklahoma City, OK	861,505	
Tulsa, OK	655,479	
State Total	1,516,984	
Oregon:		
Portland, OR—WA	1,849,898	
Eugene, OR	247,421	
Salem, OR	236,632	
State Total	2,333,951	
Pennsylvania:		
Philadelphia, PA—NJ—DE—MD	5,441,567	
Pittsburgh, PA	1,733,853	
Allentown, PA—NJ	664,651	Name Change.
Harrisburg, PA	444,474	
Lancaster, PA	402,004	
Scranton, PA	381,502	
Reading, PA	266,254	
York, PA	232,045	New TMA.
State Total:	9,566,350	
Rhode Island		
Providence, RI—MA	1,190,956	
State Total	1,190,956	
South Carolina:		
Columbia, SC	549,777	
Charleston—North Charleston, SC	548,404	
Greenville, SC	400,492	
Myrtle Beach—Socastee, SC—NC	215,304	New TMA.
State Total	1,713,977	
South Dakota:		
State Total.		
Tennessee:		
Memphis, TN—MS—AR	1,060,061	
Nashville-Davidson, TN	969,587	
Knoxville, TN	558,696	
Chattanooga, TN—GA	381,112	
State Total	2,969,456	
Texas:		
Dallas—Fort Worth—Arlington, TX	5,121,892	
Houston, TX	4,944,332	
San Antonio, TX	1,758,210	
Austin, TX	1,362,416	
El Paso, TX—NM	803,086	Name Change.
McAllen, TX	728,825	
Denton—Lewisville, TX	366,174	
Corpus Christi, TX	320,069	
Conroe—The Woodlands, TX	239,938	New TMA.
Lubbock, TX	237,356	
Laredo, TX	235,730	New TMA.
Killeen, TX	217,630	New TMA.
Brownsville, TX	217,585	New TMA.
State Total	16,553,243	
Utah:		

State/urbanized area (UZA)	UZA 2010 population	Area comparison to 2000 Census TMAs; population
Salt Lake City—West Valley City, UT	1,021,243	Name Change.
Ogden—Layton, UT	546,026	
Provo—Orem, UT	482,819	
State Total	2,050,088	
Vermont:		
State Total.		
Virginia:		
Virginia Beach, VA	1,439,666	
Richmond, VA	953,556	
Roanoke, VA	210,111	New TMA.
State Total	2,603,333	
Washington:		
Seattle, WA	3,059,393	
Spokane, WA	387,847	Name Change.
Kennewick—Pasco, WA	210,975	New TMA.
State Total	3,658,215	
West Virginia:		
Huntington, WV—KY—OH	202,637	New TMA.
State Total	202,637	
Wisconsin:		
Milwaukee, WI	1,376,476	
Madison, WI	401,661	
Appleton, WI	216,154	New TMA.
Green Bay, WI	206,520	New TMA.
State Total	2,200,811	
Wyoming:		
State Total.		
Puerto Rico:		
San Juan, PR	2,148,346	
Aguadilla—Isabela—San Sebastian, PR	306,196	
State Total	2,454,542	

[FR Doc. 2012–17514 Filed 7–17–12; 8:45 am]

BILLING CODE 4910–22–P

FEDERAL TRANSIT ADMINISTRATION

FTA Supplemental Fiscal Year 2012 Apportionments, Allocations, and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) annually publishes one or more notices apportioning funds appropriated by law. In some cases, if less than a full year of funds is available, FTA publishes multiple partial apportionment notices. This notice announces the full fiscal year (FY) 2012 contract authority, for programs authorized under the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Jamie Pfister, Director, Office of Transit Programs, at (202) 366–2053. Please contact the appropriate FTA regional office for any specific requests for information or technical assistance. A list of FTA regional offices and contact information is available on the FTA Web site at *http://www.fta.dot.gov.*

I. Overview

FTA's current authorization, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), expired September 30, 2009. Since that time, Congress has enacted short-term extensions allowing FTA to continue its current programs. The Surface Transportation Extension Act of 2012, Part II, Found in Division G of Moving Ahead for Progress in the 21st Century (MAP–21), Public Law 112–141, continues the authorization of the Federal transit programs of the U.S. Department of Transportation (DOT) through September 30, 2012. It extends contract authority for the Formula and Bus Grants programs totaling $8,360,565,000 until September 30, 2012. The provisions and funding levels of MAP–21 become effective on October 1, 2012.

Additionally, FTA's full-year appropriations bill (Pub. L. 112–055, the Consolidated and Further Continuing Appropriations Act, 2012), hereinafter (''Appropriations Act, 2012'') was enacted in November 2011, providing FTA appropriated General Fund resources for all of FY 2012 for Administrative Expenses, Capital Investment Grants, and Research programs and grants to the Washington Metropolitan Area Transportation Authority. The Appropriations Act, 2012 also provided a full fiscal year obligation limitation of $8,360,565,000 on contract authority made available to FTA programs funded from the Mass Transit Account of the Highway Trust Fund during this fiscal year.

On January 11, 2012, FTA published an apportionments notice that apportioned the FY 2012 authorized contract authority among potential program recipients based on contract

authority that was available from October 1, 2011 through March 31, 2012 (see **Federal Register**, Volume 77, No. 7). That notice also provided relevant information about the FY 2012 funding available, program requirements, period of availability, prior year unobligated balances, and other related program information and highlights.

On May 9, 2012, FTA published a supplemental apportionments notice that apportioned the FY 2012 authorized contract authority based on the authority that was available from October 1, 2011 through June 30, 2012 based on the Surface Transportation Extension Act of 2012, Public Law 112–102, which continued the authorization of the Federal transit programs of the U.S. Department of Transportation (DOT) through June 30, 2012 and extended contract authority for the Formula and Bus Grants programs at approximately seventy-five percent of the FY 2011 levels until June 30 2012. Copies of the January 11 and May 9 notices and accompanying tables can be found on the FTA Web site at *http://www.fta.dot.gov/apportionments.*

This document apportions the full FY 2012 authorized contract authority of $8,360,565,000 among potential program recipients according to statutory formulas in 49 U.S.C. Chapter 53 as authorized under SAFETEA–LU. Tables displaying the funds available to eligible states and urbanized areas have been posted on FTA's Web site at *http://www.fta.dot.gov/apportionments.*

Beginning in FY 2013, FTA will apportion funds made available under the formula programs authorized under MAP–21 and based on the statutory formulas included in MAP–21. FTA will also use urbanized area and demographic data from the 2010 Census beginning in the FY 2013 apportionments.

This notice does not include reprogramming of discretionary funds that lapsed to the designated project as of September 30, 2011 or the allocation of FY 2012 discretionary resources.

Issued in Washington, DC, this 13th day of July 2012.

Peter Rogoff,

Administrator.

[FR Doc. 2012–17447 Filed 7–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Actions on Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given of the actions on special permits applications in (June to June 2012). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on July 9, 2012.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		MODIFICATION SPECIAL PERMIT GRANTED	
14447–M	PCS Nitrogen Ohio, L.P., Lima, OH.	49 CFR 177.834(i) and 172.302(c).	To modify the special permit to authorize the addition of three new Class 8 and one new Division 5.1 hazardous material, and to extend authorization to all DOT specification cargo tanks.
13424–M	Taminco Higher Amines, Inc. (Former Grantee: Air Products & Chemicals, Inc.), St. Gabriel, LA.	49 CFR 177.834(i)(3)	To modify the special permit to authorize an additional Class 8 hazardous material.
		NEW SPECIAL PERMIT GRANTED	
15566–N	Lake and Peninsula Airlines, Inc., Port Alsworth, AK.	49 CFR 173.302(f)(3) and (f)(4).	To authorize the transportation in commerce of certain cylinders of compressed oxygen, when no other practical means of transportation exist, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test. (modes 4, 5)
15624–N	Desert Air Transport, Anchorage, AK.	49 CFR 172.101 Column (9B)	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4)
		EMERGENCY SPECIAL PERMIT GRANTED	
14526–M	Kidde Aerospace, Wilson, NC	49 CFR 173.302a	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a Division 2.2 compressed gas in a non-DOT specification cylinder similar to a DOT–39 for transportation by motor vehicle. Renewal done also (modes 1, 3)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
14641–M	Conocophillips Alaska, Inc., Anchorage, AK.	49 CFR 172.101 Hazardous Materials Table Column (9B).	To modify the special permit by adding a new description for Flammable liquids, corrosive that have a toxic subsidiary hazard. (mode 4)
15428–M	Space Exploration Technologies Corp., Hawthorne, CA.	49 CFR Part 172 and 173	To modify the special permit to authorize unlimited transportation when the residue of Dinitrogen tetroxide, 2.3, UN 1067 and Monomethylhydrazine, 6.1, UN 1244 is the only hazardous material contained in the space capsule. (mode 1)
15510–N	TEMSCO Helicopters, Inc., Ketchikan, AK.	49 CFR 172.101 Column (9B); 175.30(a)(1).	To authorize the transportation in commerce of propane in DOT Specification 4B240, 4BA240, 4BW240 cylinders via helicopter utilizing sling loads. (mode 4)
15655–N	Walt Disney Parks and Resorts U.S., Inc., Anaheim, CA.	49 CFR 173.56(b) and 172.320.	To authorize the transportation in commerce of certain waste pyrotechnic material that has not been approved under 49 CFR 173.56(b) by motor vehicle. (mode 1)
15661–N	Pyrotechnique by Grucci (PbG), Brookhaven, NY.	49 CFR, 49 CFR 173.52, 49 CFR 173.50.	To authorize the one-time, one-way transportation in commerce of certain unapproved Division 1.1G fireworks to a storage facility for the purpose of destruction. (mode 1)

DENIED

15514–N	Request by Shesam DBA Wilson Supply Cumberland, MD June 08, 2012. To authorize the transportation in commerce of certain cylinders without pressure relief devices.
15598–N	Request by Lockheed Martin Space Systems Company Denver, CO June 08, 2012. To authorize the transportation in commerce of hazardous materials listed in table 6 in spacecraft as non-specification packaging.

[FR Doc. 2012–17356 Filed 7–17–12; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before August 2, 2012.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC, or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 11, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
MODIFICATION SPECIAL PERMITS				
12516–M		Poly-Coat Systems, Inc., Liverpool, TX.	49 CFR 107.503(b)(c); 172.102(c)(3) B15 and B23; 173.241; 173.242; 178.345–1; –2; –3; –4; –7; –14; –15; 178.347–1; –2; 178.348–1; 178.348–2; 180.405; 180.413(d).	To modify the special permit that authorizes the manufacture, mark, sale and use of non-DOT specification cargo tanks constructed of fiberglass reinforced plastic by increasing the volumetric capacity.
14546–M		Linde Gas North America LLC, Murray Hill, NJ.	49 CFR 180.209	To modify the special permit to authorize an alternative testing procedures for requalifying cylinders.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15267–M		SMI Companies Franklin, LA	49 CFR 171.8	To modify the special permit to change the design by removing the 2″ nozzles on the top flange.
15599–M		Vodik Labs, (formerly Ovonic Hydrogen Systems), Fort Worth, TX.	LLC 49 CFR 173.311 ..	To modify the special permit to authorize cargo aircraft only.

[FR Doc. 2012–17354 Filed 7–17–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 17, 2012.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 11, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
NEW SPECIAL PERMITS				
15654–N	.....	T. SCOTT DUNN CONSTRUCTION, INC. DBA Heli-Dunn Phoenix, OR.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 172.200, 172.300, Part 173, 175.30(a)(1) and 175.75.	To authorize the transportation in commerce of certain hazardous materials by cargo only aircraft and 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
15656–N	.....	Korean Air Lines Co. Ltd. (KAL) Arlington, VA.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1) in that explosives listed in paragraph 6 are forbidden by cargo aircraft only, except as provided herein.	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4).
15660–N	.....	Air Products and Chemicals, Inc. Tamaqua, PA.	49 CFR 180.205 and 173.302a.	To authorize a 10-year requalification for DOT–3AL carrying Division 2.1 and 2.2 materials. (modes 1, 2, 3, 4, 5).

[FR Doc. 2012–17353 Filed 7–17–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on July 11, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Applicant No.	Applicant	Reason for delay	Estimated date of completion
	MODIFICATION TO SPECIAL PERMITS		
14372–M	Kidde Aerospace and Defense, Wilson, NC	3	10–31–2012
15258–M	Air Products and Chemicals, Inc., Tamaqua, PA	3	07–31–2012
10964–M	Kidde Aerospace & Defense, Wilson, NC	3	08–31–2012
	NEW SPECIAL PERMIT APPLICATIONS		
15080–N	Alaska Airlines, Seattle, WA	4	10–31–2012
15334–N	Floating Pipeline Company, Incorporated, Halifax, Nova Scotia	3	09–30–2012
15494–N	Johnson Controls, Battery Group, Inc., MIlwaukee, WI	3	08–31–2012
15504–N	FIBA, Technologies, Inc., Millbury, MA	3	10–31–2012
	PARTY TO SPECIAL PERMITS APPLICATION		
14372–P	L'Hotellier, France	3	10–31–2012
13548–P	A&S Batteries Inc., Billings, MT	4	11–30–2012
15537–P	Austin Powder Company, Cleveland, OH	4	10–31–2012
13548–P	Interstate Battery System of The Redwoods, Eureka, CA	4	08–31–2012
	RENEWAL SPECIAL PERMITS APPLICATIONS		
12283–R	Interstate Battery of Alaska, Ancorage, AK	4	09–30–2012
14313–R	Airgas, Inc., Radnor, PA	3	12–31–2012

[FR Doc. 2012–17355 Filed 7–17–12; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a currently approved information collection that is due for extension approval by the Office of Management and Budget. The Terrorism Risk Insurance Program Office within the Department of the Treasury is soliciting comments concerning the Record Keeping Requirements set forth in 31 CFR part 50, subpart H (Sec. 50.71 (d)).

DATES: Written comments must be received on or before September 17, 2012.

ADDRESSES: Submit comments by email to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave. NW., Washington, DC 20220. Because paper mail in the Washington DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''PRA Comments—Recoupment Procedures of the Terrorism Risk Insurance Act (TRIA)''. Please include your name, affiliation, address, email address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To makes appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1505–0207.

Title: Terrorism Risk Insurance Program—Recoupment Procedures of the Terrorism Risk Insurance Act.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (as extended by the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144) and the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160) authorize the Department of the Treasury to administer and implement the Terrorism Risk Insurance Program established by the Act. Section 103(e) of the Terrorism Risk Insurance Act of 2002 gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Secretary is required to provide for insurers to collect these amounts and remit them to Treasury. In order to determine how and when to initiate the recoupment process Treasury will require information about industry aggregate total insured losses, insurer deductibles and reserves and may need to issue a ''data call'' to supplement existing industry reporting. If recoupment is initiated, insurers will be required to report and remit the Federal Terrorism Policy Surcharge. Treasury will require access to all books, documents, papers and records of an insurer that are pertinent to the Surcharge for the purpose of investigation, confirmation, audit and examination. The record keeping and reporting requirements will arise only after Treasury has initiated the recoupment process. This clearance action is for the data call, insurer reporting and record keeping requirements set forth in 31 CFR part 50, subpart H (Sec. 50.71 (d)).

Type of Review: Extension of a currently approved data collection.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 24,200.

Estimated Average Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 121,000 hours.

Request for Comments: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collections; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2012.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. 2012–17453 Filed 7–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a currently approved information collection that is due for extension approval by the Office of Management and Budget. The Terrorism Risk Insurance Program Office within the Department of the Treasury is soliciting comments concerning the Record Keeping Requirements set forth in 31 CFR part 50, subpart J (Sec. 50.94).

DATES: Written comments must be received on or before September 17, 2012.

ADDRESSES: Submit comments by email to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave. NW., Washington, DC 20220. Because paper mail in the Washington DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''PRA Comments—Program Cap on Annual Liability''. Please include your name, affiliation, address, email address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To makes appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1505–0208.

Title: Terrorism Risk Insurance Program—Program Cap on Annual Liability.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (as extended by the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144) and the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160) authorize the Department of the Treasury to administer and implement the Terrorism Risk Insurance Program established by the Act. Section 103 of the Terrorism Risk Insurance Act of 2002 (the Act), as amended by the Reauthorization Act, sets a limit on the annual liability for insured losses at $100 billion. This section requires the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed the cap. The Act, as amended, also requires the Secretary to determine the pro rata share of insured losses under the Program when insured losses exceed the cap, and to issue regulations for carrying this out. In order to meet these requirements, Treasury may need to obtain loss information from involved insurers. This would be accomplished by the issuance of a ''data call'' to ascertain insurer losses. In the event of the imposition on insurers of a ''pro rata loss percentage'', it will be necessary to determine compliance when processing insurer claims for payment of the Federal share of compensation. This would be accomplished by nominal revision to the currently approved Treasury form TRIP 02C, ''Bordereau'' or ''Schedule C''. In 31 CFR part 50, subpart J (sec. 50.94).

Type of Review: Extension of a currently approved data collection.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 200.

Estimated Annual Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

Request for Comments: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a

valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collections; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2012.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. 2012–17455 Filed 7–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Price for the Making American History Coin and Currency Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a price of $72.95 for the Making American History Coin and Currency Set.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 12 U.S.C. § 418; 31 U.S.C. §§ 5111, 5112 & 9701.

Dated: July 12, 2012.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2012–17470 Filed 7–17–12; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that various subcommittees of the Health Services Research and Development Service Scientific Merit Review Board will meet on August 28–30, 2012, at the Boston Omni Parker House, 60 School Street, Boston, Massachusetts. Each subcommittee meeting of the Board will be open to the public the first day for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the intramural research proposals and critiques.

The purpose of the Board is to review research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

On August 28, the following subcommittees will convene: Nursing Research Initiatives from 8 a.m. to 3 p.m.; Health Services Research (HSR)—8 Research Best Practices from 3 p.m. to 4:30 p.m.; Collaborative Research (HCR) to Enhance and Advance Transformation and Excellence, HCR 0—Quality from 8 a.m. to 12 noon; and HCR 1—Infectious Disease from 1 p.m. to 4 p.m. The Career Development Award Review Group will convene from 8 a.m. to 5:30 p.m. On August 29, the Career Development Award Review Group will reconvene from 8 a.m. to 3 p.m.; and six subcommittees on Health Services Research (HSR 1—Medical Care and Clinical Management; HSR 2—Patient and Special Population Determinants of Health and Care; HSR 3—Methods and Modeling for Research, Informatics, and Surveillance; HSR 4—Mental and Behavioral Health; HSR 5—Health Care System Organization and Delivery, and HSR 6—Post-acute and Long-term Care) will convene from 8 a.m. to 6 p.m. On August 30, four subcommittees on Collaborative Research (HCR) to Enhance and Advance Transformation and Excellence (HCR 2—Prevention; HCR 3—Analytics; HCR 4—Models of Care; and HCR 5—Traumatic Brain Injury) will convene from 8 a.m. to 12 noon, and four subcommittees (HCR 6—Patient Aligned Care Teams; HCR 7—Natural Language Processing; HCR 8—Access; and HCR 9—Transitions) will convene from 1 p.m. to 4 p.m.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of each meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open sessions should contact Kristy Benton-Grover, Program Manager, Scientific Merit Review Board, Department of Veterans Affairs, Health Services Research and Development Service (10P9H), 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Kristy.benton-grover@va.gov,* at least 5 days before the meeting. For further information, please call Mrs. Benton-Grover at (202) 443–5728.

By Direction of the Secretary.

Dated: July 12, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–17376 Filed 7–17–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 138 July 18, 2012

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63
National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2011–0817; FRL–9692–9]

RIN 2060–AQ93

National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules on reconsideration.

SUMMARY: The EPA is proposing amendments to the National Emission Standards for Hazardous Air Pollutants for the Portland cement industry for Portland cement plants issued under sections 112(d) of the Clean Air Act. Specifically, the EPA is proposing to amend the existing and new source standards for particulate matter (PM). The EPA is also proposing amendments with respect to issues on which it granted reconsideration on May 17, 2011. In addition, the EPA is proposing amendments to the new source performance standard for PM issued pursuant to section 111(b) of the Clean Air Act. These proposed amendments would promote flexibility, reduce costs, and ease compliance burdens. EPA is also addressing the remand of the emission standards in the NESHAP by the D.C. Circuit on December 9, 2011. Finally, the EPA is proposing to extend the date for compliance with the existing source national emission standards for hazardous air pollutants to September 9, 2015.

DATES: Comments must be received on or before August 17, 2012. Any requests for a public hearing must be received by July 30, 2012. If the EPA holds a public hearing, the EPA will keep the record of the hearing open for thirty days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget receives a copy of your comments on or before August 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2011–0817, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/oar/docket.html*. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *Email: a-and-r-docket@epa.gov*. Include EPA–HQ–OAR–2011–0817 in the subject line of the message.
- *Fax:* Fax your comments to: (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2011–0817.
- *Mail:* Send your comments to: The EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention: Docket ID Number EPA–HQ–OAR–2011–0817. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for the EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand Delivery or Courier:* In person or by courier, deliver comments to the EPA Docket Center, EPA West (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460, Attention Docket ID Number EPA–HQ–OAR–2011–0817. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information. Please include two copies.

Instructions: Direct your comments to Docket ID Number EPA–HQ–OAR–2011–0817. The EPA policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket. The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2011–0817. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. Note that information pertinent to the previous Portland cement rulemakings discussed in this document is contained in dockets EPA–HQ–OAR–2002–0051 and EPA–HQ–OAR–2007–0877.

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. on August 2, 2012 and will be held at the EPA campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Pamela Garrett, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; email: *garrett.pamela@epa.gov;* telephone number: (919) 541–7966. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Garrett at least 2 days in advance of the potential date of the public hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Minerals and Manufacturing Group (D243–04); Environmental Protection Agency; Research Triangle Park, NC 27111; telephone number: (919) 541–2825; fax number: (919) 541–5450; email address: *nizich.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information

A. Executive Summary

The EPA is proposing amendments to the emissions standards for hazardous air pollutants (HAP) and to the performance standards for Portland cement plants. These proposed amendments respond to petitions for reconsideration filed by the Portland cement industry and to a decision by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). These amendments, which are consistent with the CAA, if adopted, will also provide less costly compliance options and compliance flexibilities, and thereby result in cost savings for the Portland cement industry. This result would also be consistent with Executive Order 13563. The proposed amendments include a new compliance date for the PM, mercury, HCl, and THC existing source standards.

(1) Purpose of the Regulatory Action

a. Need for the Regulatory Action. The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for the Portland cement source category and to the new source performance standards (NSPS) for Portland cement plants issued under sections 112(d) and 111(b) of the Clean Air Act (CAA). Section 112 of the CAA establishes a regulatory process to address emissions of HAP from stationary sources. After the EPA identifies categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) requires the EPA to promulgate technology-based NESHAP for those sources. Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions achievable which, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impact and energy requirements, the Administrator determines has been adequately demonstrated.

This proposal addresses the remand by the D.C. Circuit in *Portland Cement Ass'n* v. *EPA,* 665 F. 3d 177 (D.C. Cir. 2011). In that case, the court upheld all of the EPA's methodology for establishing the Portland cement NESHAP, denied all petitions for review challenging the NSPS, but also held that the EPA had arbitrarily denied reconsideration of the NESHAP to take into account the effect of the EPA's Nonhazardous Secondary Materials (NHSM) rule on the standards. The NHSM rule, issued after the NESHAP was promulgated, had the effect of reclassifying some cement kilns as commercial and industrial solid waste incinerators (CISWI) and thus could have an effect on the standards.

The proposal also addresses technical issues with respect to the standard for PM in both the NESHAP and the NSPS that have emerged since these rules' promulgation. We are proposing to amend the standard for PM, and also proposing to amend various implementation requirements in a way that would provide more compliance flexibilities. In addition, the proposal addresses the issues on which the EPA previously granted reconsideration.

b. Legal Authority for the Regulatory Action. These proposed amendments implement sections 112(d) and 111(b) of the CAA.

(2) Summary of Major Proposed Provisions

a. PM (PM) Emission Standards. The EPA is proposing changes to the emission standards for PM that potentially make available compliance alternatives unavailable under the promulgated existing source standards. The promulgated rule requires compliance to be demonstrated using a Continuous Emission Monitoring System (CEMS) (see section 63.1348 (75 FR 55056)). Based on the information the EPA now has, we believe that it may be problematic for a PM CEMS to meet the mandated Performance Specification 11 (PS 11) correlation requirements complying with the promulgated PM standards. (See section III.D.) As a consequence, the EPA is proposing to amend the existing and new source PM standards in the NESHAP to require manual stack testing in lieu of PM CEMS for compliance determinations. An additional consequence of this

proposed change of compliance measurement methods is that the EPA is proposing to change the averaging time and numeric emissions value of those standards. The EPA is proposing amended PM standards under the NESHAP for existing sources of 0.07 pounds per ton (lb/ton) clinker based on manual stack testing, (from 0.04 lb/ton in the 2010 rule, 30-day average with a PM CEMS) and 0.02 lb/ton clinker for new sources based on stack testing (from 0.01 lb/ton in the 2010 rule, 30-day average with a PM CEMS). The EPA is proposing amended PM standards under the NSPS for modified sources of 0.07 lb/ton clinker based on manual stack testing, (from 0.01 lb/ton in the 2010 rule, 30-day average with a PM CEMS) and 0.02 lb/ton clinker for new and reconstructed sources based on stack testing (from 0.01 lb/ton in the 2010 rule, 30-day average with a PM CEMS). The EPA is further proposing that a site-specific parametric operating limit be established, that there be continuous monitoring of that parametric limit using a PM CPMS, that an exceedance of that site-specific operating limit be reported as a deviation, triggering corrective action including conducting a Method 5 performance test within 45 days. Further, multiple deviations from the parametric limit can constitute a violation of the emissions standard.

b. Response to Remand. Consistent with the court's remand, the EPA has removed all the CISWI kilns from the database used to set the 2010 existing source standards for PM, mercury, hydrochloric acid and total hydrocarbons (THC). The EPA then recalculated existing source floors for each of these pollutants, and determined what standards to propose in light of that analysis. This analysis informed the level of the proposed standards for PM just discussed. The resulting standards are discussed immediately below.

c. Other Emissions Standards. The EPA is not proposing any changes to the existing source standards for mercury, total THC or hydrogen chloride (HCl). The reasons are set out in sections III A, B and C below.

With respect to new source standards, under section 112(d)(3) of the CAA, new source floors can be based on the performance of the ''best controlled similar source.'' A CISWI cement kiln is a similar source for purposes of this provision. The EPA, therefore, is not proposing to amend any of the new source floors or standards for mercury, THC or HCl where the best performing source in the database used to set the standards was a CISWI cement kiln.

The EPA is also proposing to amend the alternative standard for organic HAP, whereby organic HAP are measured directly. To avoid a situation where the alternative organic standard level is lower than the practical quantitation limit of the relevant analytic methods, the EPA is proposing to increase the alternative organic HAP standard from 9 parts per million (ppm) to 12 ppm. See additional discussion in section III.H below.

d. Standards during Startup and Shutdown. In the final 2010 NESHAP, the EPA established specific numerical standards for startup and shutdown for each pollutant to be measured using a CEMS over an accumulative 7-day rolling average. Because raw materials (the source of most cement kiln air emissions) are not introduced into cement kilns during startup and shutdown, cement kilns' emissions during these periods should be appreciably lower than the level of the standards. The EPA is, therefore, proposing that sources monitor compliance with these standards via recordkeeping.

e. Proposed Compliance Dates. The EPA is proposing that the compliance date for all existing source standards including standards for PM, mercury, HCl and THC, clinker piles and the standards for startup and shutdown be extended to September 9, 2015. The EPA believes that the proposed change to the PM standard makes possible compliance alternatives unavailable under the promulgated existing source standards) and that an extension until September 9, 2015, is the period in which these new compliance strategies can be implemented most expeditiously.

f. The EPA is also taking action on the remaining issues on which it granted reconsideration on May 17, 2011.

(3) Costs and Benefits

The following table 1 summarizes the costs and emissions reductions of this proposed action.

TABLE 1—COSTS AND EMISSIONS REDUCTIONS OF PROPOSED AMENDMENTS RELATIVE TO THE 2010 RULE [a b c d e]

Proposed amendment	Capital cost	Annualized cost	Emissions reduction
Revised PM standard	−$18,640,106	−$4,200,000	−135 tons/yr (emissions increase).
Replace PM CEMS with PM CPMS	0	−7,980,000	0
Total	−18,640,106	−12,180,000	

[a] See section III below for further discussion of impacts of the proposed amendments.
[b] Negative numbers indicate cost savings or emissions increase. All costs are in 2005 dollars.
[c] We also estimate that there will be a one-time cost of $25,000 for each facility to develop the calculation that will allow them to demonstrate compliance during periods of startup and shutdown.
[d] Emissions reductions are the total relative to the 2010 rule once full compliance is achieved in 2015.
[e] Full compliance costs will not occur until September 9, 2015.

The cost information in Table 1 is in 2005 dollars at a discount rate of 7 percent. The net change in annualized costs in 2015 is a $12.2 million savings compared to the 2010 rule. The EPA did not have sufficient information to quantify the overall change in benefits or costs for 2013 to 2015 that might arise due to the proposed change in compliance dates.

4. Summary of Proposed Standards

The following Table 2 shows the proposed standards.

TABLE 2—PROPOSED EXISTING AND NEW SOURCE STANDARDS

Pollutant	Existing source standard	New source standard
Mercury	55 lb/MM tons clinker	21 lb/MM tons clinker.
THC	24 ppmvd	24 ppmvd.

TABLE 2—PROPOSED EXISTING AND NEW SOURCE STANDARDS—Continued

Pollutant	Existing source standard	New source standard
PM	0.07 lb/ton clinker (3-run test average)	0.02 lb/ton clinker (3-run test average).
HCl	3 ppmvd	3 ppmvd.
Organic HAP (alternative to Total Hydrocarbon)	12 ppmvd	12 ppmvd.

B. Does this action apply to me?

Categories and entities potentially regulated by this final rule include:

Category	NAICS Code [1]	Examples of regulated entities
Industry	327310	Portland cement manufacturing plants.
Federal government		Not affected.
State/local/tribal government		Portland cement manufacturing plants.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility will be regulated by this action, you should examine the applicability criteria in 40 CFR 60.60 (subpart F) or in 40 CFR 63.1340 (subpart LLL). If you have any questions regarding the applicability of this final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. What should I consider as I prepare my comments to the EPA?

Submitting CBI

Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2011–0817.

D. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

A. What is the statutory authority for these proposed amendments?

Section 112 of the CAA establishes a regulatory process to address emissions of HAP from stationary sources. After the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) requires us to promulgate NESHAP for those sources. For ''major sources'' that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of a combination of HAP, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

The statute specifies certain minimum stringency requirements for MACT standards, which are referred to as ''floor'' requirements. See CAA section 112(d)(3). Specifically, for new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources.

In developing MACT, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. See CAA section 112(d)(2).[1]

Section 111(b) requires the EPA to set standards for emissions that ''reflect the

[1] Section 112(d)(7) states that ''[n]o other emission standard * * * under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D of this subchapter, or other authority of this chapter or a standard issued under State authority.'' This provision indicates that a section 112(d) standard does not ''trump'' any standard established under other authority which is more stringent. Section 112(d)(7) does not bar the EPA from amending section 112(d) standards to correct technical deficiencies.

degree of emission limitation achievable through the application of the best system of emission reduction.'' See CAA section 111(a)(1). In contrast to the NESHAP floor setting process, NSPS requires the EPA to take into account the ''cost of achieving'' emissions reductions, as well as health, environmental, and energy considerations. *Id.*

B. What actions preceded this proposed rule?

The history of this proposed rule, commencing with the 1999 standards and proceeding through the amendments issued in September 2009, is set out in detail in 75 FR 54970 (Sept 9, 2010). Various parties filed petitions for reconsideration of aspects of those amendments. On May 17, 2011, the EPA granted reconsideration of various issues, and denied the petitions to reconsider as to the remaining issues. See 76 FR 28318 (May 17, 2011). On December 9, 2011, the D.C. Circuit issued an opinion upholding the NESHAP itself (as well as the section 111 NSPS), but found that the EPA had arbitrarily failed to grant reconsideration to consider the effect of the EPA's NHSM rule on the standards (76 FR 15456 (March 21, 2011)), which rule had the effect of reclassifying some cement kilns as commercial and solid waste incinerators. See *Portland Cement Ass'n* v. *EPA,* 665 F. 3d 177, 186–189 (D.C. Cir. 2011). That court did not stay the standards for PM, mercury, HCl or THC, but did stay the standard for clinker piles pending the conclusion of the reconsideration process. See 665 F. 3d at 194.

In this action, the EPA is responding to the court's remand. For existing sources, the EPA is doing so by removing all kilns classified as commercial and industrial solid waste incinerators from the data used to establish the 2010 NESHAP standards. The EPA is then recalculating each of the floors based on this revised dataset and making beyond-the-floor determinations based on the recalculated floors. The EPA believes that this approach is fully responsive to the court's remand. See 665 F. 3d at 188 where the court referred favorably to this type of recalculation. For new sources, the EPA is basing floors on the performance of the best performing similar source.

III. Description of Proposed Amendments to Subpart LLL and Subpart F

A. Reconsideration of Standards

As just noted, in *Portland Cement Association* v. *EPA,* the D.C. Circuit upheld all of the EPA's methodology for establishing the Portland cement NESHAP, but remanded the standards so that the EPA could account for the effects of the EPA's NHSM rule. This rule, adopted after promulgation of the Portland cement NESHAP, had the effect of reclassifying certain cement kilns as commercial and industrial incinerators because they combust ''solid waste'' as defined by that rule. See 665 F. 3d at 185–189.

Applying that definition, the EPA has determined that there are 24 cement kilns which combust solid waste. See 76 FR 28322 and Memorandum ''Combustion in a Cement Kiln and Cement Kilns' Use of Tires as Fuel'' (April 25, 2011) (''April 25 memorandum''); see also 76 FR 80452 (Dec. 23, 2011) where the EPA identified 23 of the 24 kilns as commercial incinerators as were identified in the April 25 memorandum. The 24th kiln was identified as a CISWI kiln after development of the April 25, 2011, memorandum, but the addition of this kiln did not affect the calculations contained in the May 17, 2011 notice (CISWI Data Revisions since Reconsideration Proposal, docket EPA–HQ–OAR–2003–0119). Although the EPA has proposed to reconsider certain narrow aspects of the NHSM rule, see 76 FR 80598 (Dec. 23, 2011), this count remains unchanged by any of the issues being considered in the reconsideration of the NHSM rule. This is because either the types of secondary materials being addressed in that reconsideration are not combusted by cement kilns or the EPA has already accounted for those materials in its April 25 memorandum analysis. See 76 FR 28319 (May 17, 2011). Specifically, in the NHSM reconsideration proposal, the EPA proposed to clarify that clean cellulosic biomass and clean construction and demolition wood are not solid wastes when burned for energy recovery and that unused, off-specification tires are not wastes when burned for energy recovery. The EPA's analysis underlying its April 25, 2011, memorandum already reflects that these non-hazardous secondary materials are not wastes when burned by cement kilns for energy recovery. The EPA expects the reconsideration of the NHSM rule to be completed before taking final action on this proposed rule and the EPA will account for any changes resulting from the reconsidered final NHSM rule when it takes final action here.[2]

1. Existing Source Floors. We removed the 24 CISWI kilns from the database used to establish existing source standards and recalculated floors for existing sources. Under this analysis, the existing source floor for mercury increased from 55 lb/million (MM) tons clinker to 58 lb/MM tons clinker, the existing source floor for PM increased from 0.04 lb/ton clinker to 0.05 lb/ton clinker, the existing source floor for THC decreased to 15 parts per million by volume, dry (ppmvd), and the existing source floor for HCl stayed the same at 3 ppmvd.

As explained in section B below, the EPA is proposing to establish a beyond the floor standard for mercury of 55 lb/MM tons clinker. Moreover, for reasons independent of this analysis, the EPA is proposing to amend the existing and new source NESHAP for PM. See section D below. The EPA is not proposing to amend the HCl standard or the THC standard.

2. New Source Standards. With respect to new source standards, the EPA does not believe that any reclassification and reanalysis is necessary under the court's opinion. New source floors can be based on the performance of ''the best controlled similar source'', as opposed to existing source floors which must reflect performance of sources ''in the category or subcategory''. See CAA section 112(d)(3) and (d)(3)(A). A CISWI cement kiln is similar to a non-CISWI cement kiln since the device is a cement kiln. Equally important, burning secondary materials for energy recovery does not significantly alter a cement kiln's HAP emission profile. See 76 FR 28320 (May 17, 2011) (documenting both the basis for this conclusion and the cement industry's agreement with it).[3] [4]

[2] The EPA has also conducted a bounding analysis of potential floors by removing from the data base all cement kilns that burn any type of secondary material for energy recovery (so that there is no possibility that any CISWI kiln is in the bounding analysis database). Under this analysis, the existing source section 112 floor for HCl was unchanged, the existing source floor for PM was essentially unchanged, the existing source floor for THC becomes more stringent (as in the April 25, 2011, analysis), and the existing source mercury floor increases from 55 lb/MM ton clinker to 66 lb/MM ton clinker. However, even in this case, a beyond-the-floor mercury limit of 55 lb/MM tons clinker would be cost effective and the EPA would propose the same standards as under this proposal if this bounding analysis were used in place of the analysis described in the text. The EPA, thus, does not believe that the precise count of CISWI kilns will affect the outcome of this rulemaking. See Bounding Analysis for Portland Cement MACT Floors, May 14, 2012.

[3] The EPA is thus not reopening the new source standards (with the exception of the PM standard,

B. Mercury Standard

1. New Source Standard. As explained above, the new source standard is based on the performance of the best performing similar source.

2. Existing Source Standard. As noted above, the recalculated existing source floor is 58 lb/MM tons clinker produced. The EPA is proposing a beyond-the-floor standard of 55 lb/MM ton clinker produced, the level of the 2010 final standard. As described below, the only difference in cost between the two levels is the incremental cost of removing slightly more mercury, which is estimated at $2,000/lb of mercury removed. This is because the control equipment needed for mercury would not alter, would not need to be sized differently, and would need to perform on average nearly identically at either a 55 lb/MM tons clinker or a 58 lb/MM tons clinker level. That is, in planning compliance, kilns would calibrate to achieve an average performance of 34.1 lb/MM tons clinker for a standard of 58 lb/MM tons clinker, and 31.7 for a standard of 55 lb/MM tons clinker, which translates to an additional reduction of 2.4 lb/MM tons of clinker per year. This equates to an estimated 180 pounds of nationwide mercury emissions per year, incremental to the recalculated floor. To achieve this additional reduction, we estimated an additional cost of approximately $355,000 for the industry, the cost of purchasing additional carbon injection materials. This equates to a cost-effectiveness of $2,000/lb of mercury reduction per year. This is the incremental cost of going from the recalculated floor of 58 lb/MM tons clinker to the proposed 55 lb/MM tons clinker. Because this is the same level as the 2010 rule, there are no incremental costs or emissions impacts when compared to the 2010 rule. See section 8.2, Portland Cement Reconsideration Technical Support Document. Moreover, this reduction is highly cost-effective. A cost effectiveness value of $2,000/lb. mercury is considerably less than values the EPA have found to be cost effective for removal of mercury in other air toxics rules. For example, in the National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants, the cost effectiveness was found to be between $13,000 to $31,000 per pound for the individual facilities (see Supplemental proposed rule, 76 FR 13858 (March 14, 2011)). The EPA also does not see any adverse energy or non-air quality health or environmental consequences of a 55 lb/MM tons clinker beyond-the-floor standard.

We are not proposing a beyond the floor level below 55 lb/MM tons clinker for the same reasons given in the 2010 final rule—in particular the possibility that a lower standard could force some kilns to find alternative sources of limestone, at enormous cost and disruption. See 75 FR 54980 (September 9, 2010).

C. THC Standard

The THC data for the 2010 standard consist of CEMS data for 15 kilns. After removing the four CISWI kilns, nine kilns remain. Thus, the MACT floor kilns consisted of 12 percent of these nine kilns, or two kilns. The top two kilns were Suwannee and Holcim. As explained above, when CISWI sources are removed from the database for the 2010 standards, the existing source floor for THC becomes more stringent from 24 ppmvd to 15 ppmvd, and the new source standard would drop from 24 ppmvd to 11 ppmvd. This change results from removing from the database a CISWI cement kiln (the Lehigh Union Bridge kiln) with the lowest daily average performance but with more associated variability than the other kilns with the next highest daily average performance. See also 76 FR 28322 (May 17, 2011) n. 11 and 665 F. 3d at 188. However, notwithstanding this calculation, the EPA is not proposing to reduce the level of either the new source or the existing source THC standard.

1. New Source Standard. As just explained, the new source standard can be based on performance of a ''best controlled similar source'', so there is no reason under the statute or the court's remand to amend the new source THC standard. The standard is also technically appropriate. See 75 FR 54981 (September 9, 2010) (explaining basis for the THC new source standard, which discussion is summarized below for the readers' convenience). Removing the CISWI Union Bridge kiln as the best performing new source would leave the Suwannee kiln as the lowest emitter based on its daily average THC emissions. See Portland Cement Reconsideration Technical Support Document (TSD), section 8.4, which is available in this rulemaking docket. This kiln has higher average emissions than the Union Bridge kiln (that is, its daily average emissions are higher than the Union Bridge kiln). This kiln thus emits more THC than the Union Bridge kiln, so the EPA identified the kiln emitting less THC on average—the Union Bridge kiln—to be the best performer. The Suwannee kiln has less measured variability than the Union Bridge kiln, but also has hundreds of fewer observations. For this reason, the EPA considered the Union Bridge kiln to be more representative of variability, and used its 99th percentile performance as the measure of performance of the best performing similar source in establishing the new source standard. See 75 FR 54981 (September 9, 2010).[5]

2. Under the calculation described above, the existing source floor would be reduced from 24 ppmvd to 15 ppmvd. Subject to any comments the EPA receives on this proposed action, the EPA believes that such a floor level would not be technically appropriate. It omits the variability of the similar source with the best average performance for THC (the Union Bridge kiln), and so may not be fully representative of variability of best performing sources. As noted above, cement kiln HAP emissions are not appreciably affected by burning secondary materials for energy recovery so the Union Bridge's variability is representative of cement kiln variability. In addition, as noted above, the number of daily observations for the Union Bridge kiln is among the most robust in the database, containing over 3 times the number of observations as the next best performing cement kiln. Thus, there is a ''demonstrated relationship'' between the variability of the Union Bridge kiln and the variability of the best performing sources in the existing source floor pool. *Sierra Club* v. *EPA,* 479 F. 3d 875, 882 (D.C. Cir. 2007). The EPA consequently believes it is technically justified to consider the

which the EPA is proposing to amend). We will take comment on whether CISWI cement kilns can be considered a ''similar source'' under section 112(d)(3) and whether retention of the 2010 new source standards on this basis is consistent with the D.C. Circuit's opinion. The EPA will not consider comments challenging the data and methodology for the new source standards since these are unchanged from the 2010 rule and the EPA is not reexamining any of these issues.

[4] If the EPA were to reconsider the new source standards by removing the 24 CISWI kilns from the database, then the mercury new source floor increased from 21 to 24 lb/MM tons clinker, the THC new source floor decreased from 24 to 11 parts per million by volume dry (ppmvd), and the PM and HCl new source floor stayed the same at 0.01 lb/ton clinker and 3 ppmvd, respectively (see Memorandum, Revised Portland Cement NESHAP with CISWI kilns removed, March 21, 2011). However, as explained in the text, because CISWI cement kilns are ''similar sources'' for purposes of establishing NESHAP new source standards, the EPA is not relying on this analysis here.

[5] For purposes of comparing the relative variability of the THC CEMS data for each of the kilns in our THC data set, we used the ratio of the 99th percentile for each kiln divided by its daily average. A ratio of 1.0 indicates no variability. As the ratio increases, variability increases. See Portland Cement Reconsideration TSD, section 8.4, which is available in this rulemaking docket.

Union Bridge kiln's variability in estimating the variability of the best performing cement kilns for THC emissions.

If the variability of the Union Bridge kiln is included along with the variability of the two best performing cement kilns, and applied to the two best performing cement kilns' performance, the floor would be 24 ppm, which the EPA is proposing as a floor. See Portland Cement Reconsideration TSD, section 8.4. This is the level of the 2010 standard.

3. Beyond the floor standards. The EPA is not proposing a beyond the floor THC standard for existing cement kiln sources. The reasons given in the rulemaking remain valid. See 75 54983 (September 9, 2010); 74 FR 21153 (May 6, 2009). We especially note that a more stringent standard for THC would force the increased use of energy-intense control technologies like regenerative thermal oxidizers (RTO) which have negative environmental implications, notably increased emission of carbon dioxide (CO_2) and other greenhouse gases, as well as increased emissions of nitrogen oxide (NO_X), carbon monoxide, sulfur dioxide (SO_2) and PM_{10}. See 74 FR 21153 (May 6, 2009).[6] These devices are also extremely costly and not cost-effective. See 74 FR 21153 (May 6, 2009). For a description of the costs, energy requirements and environmental impacts of RTO, see Summary of Environmental and Cost Impacts for Final Portland Cement NESHAP and NSPS, August 6, 2010, docket no. EPA–HQ–OAR–2002–0051–3438. For all these reasons, the EPA does not consider a beyond-the-floor standard for THC to be justified under section 112(d)(2). Consequently, the EPA is not proposing a beyond-the-floor standard for THC for existing sources.[7]

D. Proposed Amendments to Existing Source and New Source Standards for PM Under Section 112(d) and 111(b)

Based largely on developments which have occurred after the EPA granted reconsideration on certain aspects of the NESHAP [8], the EPA is proposing revisions to the testing and monitoring methods used to demonstrate continuous compliance with the existing and new source PM emissions standards and is proposing changes to the averaging time, level, and compliance demonstration for those standards. The EPA has also removed all CISWI kilns from the data base used to establish the standards for PM and used this revised data base in determining the level of the standard, consistent with the court's remand. We explain these proposed changes below.

In comments to the 2009 proposal, industry commenters maintained that there were several problems with implementing the monitoring requirements to demonstrate compliance using a PM CEMS and with the requirements to conduct a periodic audit of the PM CEMS in accordance with Performance Specification (PS) 11 of appendix B and Procedure 2 of appendix F to part 60. The EPA responded to these comments in the 2010 final rule. See 75 FR 55007 (September 9, 2010); NESHAP Response to Comment Document pp. 163–166. Since that time, the Portland cement industry has identified further technical issues associated with the current PM CEMS technology in satisfying PS 11 correlation requirements that have emerged as the industry has attempted to develop a CEMS-based compliance strategy for PM pursuant to the 2010 NESHAP.

1. PS 11. The EPA has continued to review the application of PM CEMS in relation to the procedures and acceptance criteria of PS 11, the protocol mandated by the promulgated rule. See section 63.1350(b)(1). PS 11 is structured differently than other PS that apply to validating the performance of gaseous pollutant CEMS. This is primarily because the pollutant, PM, is defined entirely by the test method specified by regulation to measure it. As the industry commenters note, there are no independent standard reference materials for PM concentrations as there are for gaseous pollutants (e.g., NIST traceable compressed gases for validating SO_2 or NO_X instrumental measurements). The only reference standard for determining the PM concentration in an air or stack gas sample is the reference test method. In the case of the Portland cement NESHAP (and NSPS), the rule specifies the EPA Method 5 for measuring filterable PM concentration or mass rate (e.g., in mg/dscm or lb/hr).

PS 11 provides procedures and acceptance criteria for validating the performance of several types of PM CEMS technologies. Although there are multiple instrument and data reporting operational performance checks in PS 11 that are similar in concept to those for gaseous pollutant CEMS, there is the principal PM CEMS performance requirement that is distinctly different. That requirement is the development of a site-specific PM CEMS correlation or mathematical response curve. There is a key procedural element to developing that correlation. That is, PS 11 requires that the source conduct multiple stack test runs using an EPA PM test method (e.g., Method 5) and simultaneously collect corresponding PM CEMS output data. PS 11, section 8.6, requires at least five test runs at each of three different operating (i.e., low, mid, and high PM concentration) conditions that range from 25 to 100 percent of allowable emissions, if possible, for a total of 15 or more test runs. Then the source must use the test method data and the corresponding PM CEMS output data to develop an equation (i.e., a calculated linear or nonlinear curve) that will be used to define the relationship between the PM CEMS output and the test method measured PM concentrations. Each site-specific correlation must meet several PS 11 acceptance criteria including limits on confidence interval and tolerance interval equating to ±25 percent of the applicable emissions limit.

2. Discussion of Technical Issues. A particular challenge in applying PM CEMS to source emissions monitoring is in measuring the very low PM concentrations associated with a low applicable emissions limits for PM precisely enough to meet the PS 11 correlation requirements. In addition to

[6] The EPA estimates that each thermal oxidizer emits an added increment of 0.02 tons of CO_2 for each ton of clinker produced. A typical kiln producing 1.2 million tons of clinker per year and controlled by an RTO would emit an additional 24,000 tons of CO_2 per year. See RTO Secondary Impacts, May 16, 2012, in this rulemaking docket.

[7] The EPA is also proposing to amend the alternative standard for organic HAP under which organic HAP is measured directly. See section I below.

[8] On November 15, 2011, Holcim (US) Inc., a domestic cement company, submitted a petition for reconsideration to the EPA requesting that the EPA reconsider and stay the NESHAP PM standard. The basis for the petition was CEMS data for PM from four of Holcim's kilns (some of which are either waste-burning or hazardous waste burning). Petition pp. 5–6. This information was collected commencing in January 2011. Since the information in the petition was gathered outside the time period mandated by section 307(d)(7)(B) of the Act—even assuming it was impractical to raise the objection during the public comment period, the grounds arose outside the time period for judicial review which ended in November 2010. Thus, the EPA believes that it is not compelled to grant this petition. Moreover, as discussed in the text below, because the EPA is proposing to no longer use a CEMS-based regime for the PM standard, the Holcim information is no longer of direct relevance in setting the level of the PM standard. A further issue with the data is that they were not obtained using CEMS calibrated according to PS–11, the protocol specified in the rule. Accordingly, the EPA is not basing its proposal of a revised PM standard on these data. The EPA is not, however, taking final action on the Holcim petition at this time, but intends to do so in conjunction with the issuance of the final reconsideration rule.

On January 17 2012, LaFarge Cement submitted a petition for reconsideration containing no new data or information but arguing that the Holcim petition justified reconsideration of the standards. The EPA believes that this petition is subsumed by the Holcim petition.

measurement uncertainty inherent in PM CEMS data, the measurement uncertainty associated with the reference test method (e.g., Method 5) is a significant contributor to successful development of a PM CEMS correlation regardless of the type of PM CEMS used.

As noted above, PS 11 specifies acceptable criteria for a correlation directly related to the applicable emissions limit. The Portland cement NESHAP PM emissions limit for existing sources of 0.04 lb/ton of clinker equates to 5 to 8 mg/dscm, depending on production rate (assuming a typical total gas flow rate per clinker production rate). For a PM CEMS set up to measure compliance with a 5 to 8 mg/dscm equivalent limit, the inherent uncertainty associated with a 1 hour Method 5 measurement (±0.6 to 1.2 mg/dscm) would constitute more than half of the ±25 percent of the applicable PS 11 acceptance threshold (i.e., ±1.2 to 2.0 mg/dscm) of the mid-level PS 11 correlation test (i.e. the correlation for the middle of the three PS 11 correlation points).

Although one can improve the method detection capabilities of the Method 5 or other filterable PM test method by increasing sampling volume and run time, uncertainties in measurement would remain. For example to achieve a practical quantitation limit of 1 mg/dscm, one would need to conduct a test run of 6 hours or longer. The measurement uncertainty associated with a 6-hour Method 5 test runs at this concentration would be ±0.01 to 0.2 mg/dscm. At this level, the uncertainty associated with the PM test method measurements alone would be about half of the correlation limit allowed in PS 11. The PS 11 correlation calculations would also have to account for any PM CEMS measurement uncertainty.

Factoring in the inherent PM CEMS response variability and the uncertainty associated with the representative sampling (e.g., PM and flow stratification), we agree with commenters that trying to satisfy PS 11 at such low concentrations using 1 hour Method 5 test runs could be problematic. The same issue arises for the new source standard because of the lower limit of the new source standard.

The industry also argued that the variable raw feed material and chemical additives used in cement production will lead to changes in particle size, refractive index, particle density, and other physical characteristics of the particulate in the exhaust stream. This is important, according to the comments, because correlations developed for the light scatter and scintillation PM CEMS technology may be adversely affected by these physical changes in particles irrespective of changes in mass emissions rates or concentrations.

In developing the 2010 final rule, the EPA assumed that cement kilns would be using light-scatter or scintillation PM CEMS.[9] The output or response of these light based detectors is a function of the index of refraction or photoelectric effects and the size distribution of the particles in the exhaust stream. In addition to being more sensitive than opacity monitors, light based detectors provide several degrees of design freedom not applicable to opacity monitors. PM CEMS manufacturers account for characteristics such as light wavelength, scattering angle, and solid angle of detection in designing instruments with desired response features. These types of PM CEMS can be reliably calibrated per PS 11 where the relative characteristics (e.g., distribution of size, shape, and constituents) of the PM in the exhaust remain relatively constant. Such may be the case, for example, where the PM being measured is predominantly combustion ash from burning fossil fuels in a boiler or an electricity generating unit.

The dominant sources of PM from a cement kiln are not from fuel combustion but from processing raw materials. Cement kilns process mostly limestone with naturally occurring variability in component percentages. See 74 FR 21142 (May 6, 2009); 75 FR 54977 (September 9, 2010). Cement kiln operators also add other chemical additives in variable concentrations to produce certain product characteristics. See 74 FR 21142. As noted in the EPA's technology background documents (e.g., *http://www.epa.gov/ttn/emc/cem/pmcemsknowfinalrep.pdf* and *http://www.epa.gov/ttn/emc/cem/r4703-02-07.pdf*), the correlations developed for light-scatter or scintillation PM CEMS devices may be adversely affected when there are changes in the particle structure, size, and other physical characteristics of the emissions. These changes in emissions characteristics can occur with the variability inherent in the composition of fuels and raw feed materials, with use of mixed multiple fuels, or with addition of chemical additives in various proportions.[10]

This is an issue of special import for cement kilns. One can expect significant variations in particle size distribution and other particle characteristics in Portland cement kiln exhaust because of the complicating effects of variable content feed materials and chemical additives. That means that correlations developed for one set of conditions may not apply with changes in feed materials or under other operating conditions (e.g., different chemical additives).

The EPA has investigated whether PM CEMS that work on principles other than light scattering could effectively measure cement kiln PM and be calibrated per PS 11 requirements. There is at least one other PM CEMS technology, beta attenuation PM CEMS, also referred to as beta gauge technology that is much less sensitive to changes in particle characteristics than are light based detectors. The beta attenuation PM CEMS extracts a sample for the stack gas and collects the PM on a filter tape. The device periodically advances the tape from the sampling mode to an area where the sample is exposed to Beta radiation. The detector measures the amount of beta radiation emitted by the sample and that amount can be directly related to the mass of PM on the filter.

The majority of PM CEMS devices used to date by cement kilns are based on light scatter or scintillation detection. We understand that a few Portland cement operators have applied beta attenuation devices. Since the EPA premised the rule on use of a different type of PM CEMS, since there is minimal operating experience with beta gauge PM CEMS in this industry, and because we are not aware that the experience includes a beta gauge PM CEMS calibrated per PS 11, the EPA believes that some type of research effort involving testing would be needed before predicating a PM standard on use of a beta gauge PM CEMS. Such an effort is likely to take several years to implement.[11]

These issues exacerbate the uncertainties of calibrating PM CEMS at the level of the 2010 p.m. standards noted above. Using data from longer Method 5 test runs will improve the probability of a PM CEMS meeting PS 11 correlation requirements but will also raise practicality concerns potentially without completely resolving the problems. Given the combination of the low emissions concentrations PM CEMS measurement

[9] US EPA, CEMS Cost Model, July 2006.

[10] Memorandum, from C. Oldham to B. Schell, Particulate Matter Continuous Emission Monitoring System (PM CEMS) Capabilities, June 13, 2012.

[11] We also note that PS 11 provides for means to minimize the effects of changing particle sizes, for example by developing multiple correlation curves, each of which requires 15 Method 5 test runs. The EPA did not consider such an approach in promulgating the rule and again, further technical work is needed to ascertain if such an approach would yield reliable results.

uncertainty factors discussed above, the variability in composition of cement PM, and need for extraordinarily long test runs to reduce Method 5 uncertainty to a level that compensates sufficiently for the PM CEMS measurement uncertainty, the EPA believes that this correlation will not be technically or practically achievable for a significant number of cement kiln sources.

3. A monitoring approach alternative to PM CEMS and PS 11. To address technical issues associated with PM CEMS meeting PS 11 correlation requirements at low PM emissions concentrations from cement kilns and the potentially variable PM emissions characteristics expected from Portland cement kilns, the EPA is proposing to change the compliance basis for the PM emissions limit from PM CEMS and the 30-day average emissions calculation. For monitoring continuous compliance, the rule would require PM CEMS equipment but, as explained below, that equipment would be used for continuous parametric monitoring rather than for direct measure of compliance with the numerical PM emissions limit.

The EPA is proposing to change the means of demonstrating compliance from PM CEMS to Method 5 stack testing. In applying Method 5, PM is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at a temperature of 120 ± 14 °C (248 ± 25°F). The PM mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water. Compliance with the numerical emissions limit is then based on an average of three 2-hour test runs rather than a 30-day average determined from PM CEMS data. The numerical level of the standard would change to reflect the different averaging period. See 75 FR 54988 (September 9, 2010) (explaining that more measurements of a properly designed and operated control device decreases measured variability since there are likely to be more measurements at the mean of performance); see also 75 FR 54975 (September 9, 2010) (explaining how this phenomenon is reflected in the Upper Prediction Limit (UPL) equation used to project variability, since the m term (i.e., the number of measurements) in the equation becomes larger with more observations resulting in a larger denominator and hence lower ultimate level). By changing from a 30-day average with potentially 720 hourly values to a three-run test average producing three test run values, we reviewed and revised the calculation of the PM emissions floor and standard, and consistent with the court's remand, removed all CISWI kilns from the database in doing so. In calculating the PM MACT floor, the best performing kilns used in the analysis changed as a result of removing the kilns identified as CISWI kilns.

In addition, we realized that in the original analysis PM emissions data for a single kiln were inadvertently treated as test results for three different kilns. After making that correction and after eliminating kilns identified as CISWI, the number of kilns in the data set was reduced from 45 kilns to 28 kilns. Therefore, the best performing 12 percent was represented by four kilns. As a result of removing the CISWI kilns, two kilns which were not best performers in the 2010 dataset are now best performers. See TSD section 8.3 and Appendices E and F.

As in the 2009 proposal, we used individual test run data from our best performing kilns and calculated the 99th confidence UPL. Rather than using m = 30 in the equation as we did in the 2010 final rule where compliance was based on a 30 day rolling average, see 75 FR 54988 (September 9, 2010), we used m = 3 consistent with the proposed requirement to determine compliance using a three run Method 5 test. Under this analysis, we determined the revised proposed PM MACT floor to be 0.07 lb/ton clinker produced when based on the three run Method 5 test. Beyond-the-floor standards do not appear to be justified for the same reasons given in the 2010 final rule. See 75 FR 54988 (September 9, 2010). We are, therefore, proposing this emissions limit for the kiln and clinker cooler and an initial and annual compliance test using Method 5 to demonstrate compliance.

These issues affecting the existing source PM limit also apply to the new source PM limit. Based on this revised compliance regime, the new source floor would change from 0.01 lb/ton clinker produced, to 0.02 lb/ton clinker produced, based on a three run average from a Method 5 stack test. See Portland Cement Reconsideration TSD, section 8.3. The best performing kiln used to set the MACT floor for new sources in the 2010 rule was a cement kiln, not a CISWI kiln, so the same kiln was used for this analysis. The difference is that because a 3-run test would be used to determine compliance rather than a 30-day rolling average, the calculation of the 99th confidence UPL used m = 3 rather than 30, which results in a floor of 0.02 lb/ton clinker. The EPA is not proposing a beyond-the-floor standard for the reasons given at 75 FR 54988 (September 9, 2010).

As indicated above, the EPA is further proposing to use PM CEMS technology for continuous parametric monitoring of the proposed PM standards. The EPA has developed requirements for continuously monitoring operating parameters in instances where compliance is based on non-continuous measurements, as would now be the case for PM. This implements section 114(a)(3) of the CAA which requires major sources to use enhanced monitoring for compliance certifications. The EPA's historic approach has been to require monitoring of a control device operating condition (e.g., electrical power, water flow rate, pH) the limit of which is based on a periodic compliance test with the compliance test method. The use of a continuous parametric monitoring system (CPMS) based on PM CEMS technology (PM CPMS) is a significant step closer to direct measurement of emissions in units of the emissions limit and an improvement over less direct monitoring of a process control device conditions.

Specifically, this proposal recognizes the value of PM monitoring technology sensitive to changes in PM emissions concentrations and use of such a tool to assure continued good operation of PM control equipment. This approach avoids the PM CEMS calibration (i.e., PS 11 correlation) issues that can be exacerbated for Portland cement installations. PM CEMS technology can be effective in monitoring control device performance (see, e.g., 77 FR 9371 (February 16, 2012)) where the EPA established PM CPMS parametric operating limits for electricity generating units).

As a result, this proposed rule would require the installation and operation of a PM CPMS for parametric monitoring associated with the proposed PM standard. The source owner would not have to meet PS 11 requirements but would have to prepare and submit for approval, if requested by a permitting authority, a site-specific monitoring plan to apply sound practices for installing, calibrating and operating the PM CPMS.

Current PM CPMS have an operating principle based on in-stack or extractive light scatter, light scintillation or beta attenuation. The source owner or operator would need to examine the fuel and process conditions of his stack as well as the capabilities of these devices before selecting a particular CPMS technology. The reportable measurement output from the PM CPMS may be expressed as milliamps, stack

concentration or other raw data signal. For the purposes of this proposed rule, the source owner would establish an operating limit based on the highest PM CPMS hourly value collected during the most recent PM compliance test (or other stack tests accepted as a legitimate basis for compliance, as explained below). The source would collect PM CPMS data continuously and calculate a 30 operating day rolling average PM CPMS output value from the hourly PM CPMS data collected during process operating hours and compare that average to the site specific operating limit. For these reasons (i.e., 30 days to mitigate the effects of measurement and emissions variability and using the highest hourly average from the stack testing), the EPA believes that use of the PM CPMS for parametric monitoring should not pose the same technical issues as those underlying the proposed decision to base compliance on PM CEMS measurements.

We are proposing a number of consequences if the kiln PM monitoring parameter is exceeded. First, the source owner will have 48 hours to conduct an inspection of the control device and to take action to restore the controls if necessary and 45 days to conduct a new PM Method 5 compliance test to verify ongoing compliance with the PM limit. Within 60 days complete the emissions sampling, sample analyses and verification that the source is in compliance with the emissions limit in accordance with the test procedures in either section 60.64 or 63.1349(b)(1). Also, determine an operating limit based on the PM CPMS data collected during the performance test. Compare the recalculated operating limit with the existing operating limit and, as appropriate, adjust the numerical operating limit to reflect compliance performance. Adjustments may include applying the most recently established highest of the three test run hourly averages or combining the data collected over multiple performance tests to establish a more representative value. Apply the reverified or adjusted operating limit value from that time forward.

Second, the EPA is proposing that this proposed rule limit the number of deviations of the site-specific CPMS limit leading to follow up performance tests in any 12-month process operating period and an excess of this number be considered to be a violation of the standard. This presumption could be rebutted by the source, but would require more than a Method 5 test to do so (e.g., results of physical inspections). This additional information is necessary since a Method 5 test could not be conducted following the discovery of deviations and would not necessarily represent conditions identical to those when the deviations occurred. The basis for this part of the proposal is that the site-specific CPMS limit could represent an emissions level higher than the proposed numerical emissions limit since the PM CPMS operating limit corresponds to the highest of the three runs collected during the Method 5 performance test. Second, the PM CPMS operating limit reflects a 30-day average that should represent an actual emissions level lower than the three test run numerical emissions limit since variability is mitigated over time. See 75 FR 54988 (September 9, 2010); 54975–76. Consequently, we believe that there should be few if any deviations from the 30-day parametric limit and there is a reasonable basis for presuming that deviations that lead to multiple performance tests to represent poor control device performance and to be a violation of the standard.

Therefore, the EPA is proposing that PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period to be presumed a violation of this standard, subject to the source's ability to rebut that presumption with information about process and control device operations in addition to the Method 5 performance test results.

Finally, the EPA is proposing that the NSPS for PM established pursuant to section 111(bb) also be revised so that these limits are no longer CEMS-based and reflect the resulting different numerical values and averaging times. Although the NSPS for PM rests on a justification independent of the NESHAP PM standard (see *PCA* v. *EPA,* 665 F. 3d at 192–93), the technical issues associated with the use of PM CEMS in this industry are common to both standards and the proposed amendments, therefore, appear appropriate for the NSPS as well. The EPA believes that these proposed requirements represent Best Demonstrated Available Technology for new cement kilns given that the standards remain predicated on the performance of the best industry performers and the costs remain those already found to be reasonable. See id. at 191–92 discussing and upholding the EPA's NSPS for PM.

E. Summary of Proposed Standards Resulting From Reconsideration

The EPA is proposing the following revised MACT standards:

TABLE 3—PROPOSED EXISTING AND NEW SOURCE FLOORS AND STANDARDS [a]

Pollutant	Existing source standard	New source standard
Mercury	55 lb/MM tons clinker	21 lb/MM tons clinker.
THC	24 ppmvd	24 ppmvd.
PM	0.07 lb/ton clinker (3-run test average)	0.02 lb/ton clinker (3-run test average).
HCl	3 ppmvd	3 ppmvd.
Organic HAP	12 ppmvd	12 ppmvd.

[a] Standards for mercury and THC are based on a 30-day rolling average. The standard for PM is based on a three run test. If using a CEMS to determine compliance with the HCl standard, the floor is also a 30-day rolling average. Organic HAP standards are discussed in section H below.

F. Standards for Fugitive Emissions From Clinker Storage Piles

In the September 2010 rule, the agency established work practice requirements to reduce fugitive emissions from outdoor clinker storage piles. The agency had information that these storage piles emit HAP in the form of fugitive PM containing HAP metals, so that regulation of these sources was necessary. Because the emissions in question were fugitive dusts for which measurement was not feasible, the agency adopted work practices as the standard, specifically the work practice standards and opacity emissions limits contained in California's South Coast Air Quality Management District Rule 1156 as amended on March 6, 2009. Because there were only two plants which we could state definitively had open storage piles and both were complying with Rule 1156, we believed that the regulatory standards under Rule 1156 constituted the floor level of control. The current promulgated work practices consist of providing varying

degrees of enclosures or barriers to prevent wind erosion of the storage piles. See generally 75 FR 54989 (September 9, 2010).

In their reconsideration petition, the cement industry maintained that the EPA did not provide sufficient notice of the standards it might adopt for clinker storage piles. We agreed and granted reconsideration. See 76 FR 28325 (May 17, 2011). The D.C. Circuit stayed the standard pending the conclusion of the EPA's reconsideration. See 665 F. 3d at 189.

Industry also noted, correctly, that more than two plants are potentially affected by clinker pile standards, so that the California rule is not necessarily a floor level of control. To evaluate which work practices are currently used in the industry, we requested data from the industry on currently used work practices. We also undertook a review of state permits to determine the level of controls to which open clinker piles are currently subject. Based on this information, the EPA is proposing to amend the work practices for clinker storage piles.

1. What is a clinker pile?

Clinker storage is necessary to allow near continuous kiln operation and intermittent grinding and processing of the clinker. Clinker storage is also necessary in the event of unplanned or planned kiln shutdowns. Cement plants use silos, domes or other enclosure for clinker storage. Additional clinker storage may also be necessary to accommodate extended shutdown periods for kiln maintenance and/or market conditions. When the conventional enclosed storage is not adequate, clinker may be stored in outdoor piles. Unlike automated systems for drawing down clinker from enclosed silos, these temporary outdoor storage piles are drawn down using equipment such as front end loaders or other reclaiming equipment. Outdoor clinker storage may be temporary, lasting a few days or weeks and up to several months. There are also open clinker piles that have been in existence for years and are essentially permanent.

2. What are the proposed standards?

We are proposing amended standards that will control HAP metal emissions from open clinker piles. Because the emissions are fugitive, we are proposing work practices instead of an emissions limit since it is ''not feasible to prescribe or enforce an emission standard'' for these emissions because, as fugitive emissions, they are not ''emitted through a conveyance designed and constructed to emit or capture such pollutant''. See CAA section 112 (h)(2)(A). The work practices would apply to any open clinker piles regardless of the quantity of clinker or the length of time that the clinker pile is in existence.

According to industry stakeholders, virtually all Title V permits oblige cement plant operators to ''minimize'' fugitive emissions including those from open clinker piles. See Portland Cement Reconsideration TSD, section 2, which is available in this rulemaking docket. Our examination of relevant permits indicates that some permits establish an opacity limit not to be exceeded in conjunction with materials management. Others contain a ''no visible emissions'' limitation at the fence line of the facility. Industry stakeholders state that to minimize fugitive emissions from open clinker piles, plants employ a number of practices, the most common being to use water sprays to form a concrete-like crust on the exposed surface of the clinker pile. Clinker has cement like properties and when exposed to water will hydrate and harden. The crust formed by this practice is very effective at reducing fugitive emissions as long as the pile is not disturbed. Another common practice is to cover clinker piles with tarps, which may be held down with tires, which effectively minimizes fugitive emissions. Some plants also use foam sprays on the exposed surface of the pile, forming a coating which reduces or prevents fugitive emissions.

Based on our review of 88 state Title V permits, all but one permit required one or a combination of the following control measures to reduce fugitive emissions generally: Work practices, opacity or visible emission limits, prohibitions against open clinker piles and some type of general duty requirements to minimize fugitive dust emissions. Eight of the permits contained requirements specific to open or outdoor clinker piles. Eighteen permits contained standards that restricted emissions more generally from outdoor storage piles including opacity and visible emissions limits and general duty requirements to not produce PM or dust emissions at the property line. Seventy-seven permits contained facility-wide restrictions that applied to a variety of fugitive sources at the cement facilities (e.g. roads, storage, raw materials). In only one permit was it not clear that there were requirements to minimize fugitive dust emissions.

With the exception of total enclosure of all open clinker piles, the EPA believes that the control measures in the permits are equally effective in reducing fugitive emissions. These measures are, therefore, consistent with section 112(d) controls and reflect a level of performance analogous to a MACT floor. See CAA section 112(h)(1) (in promulgating work practices, the EPA is to adopt standards ''which in the Administrator's judgment [are] consistent with section (d) or (f) of this section.'') The option of full enclosures, somewhat analogous to a beyond-the-floor standard under section 112(d)(2), would be extremely costly with minimum associated emissions reductions incremental to the measures already undertaken (which already reduce most or all of the fugitive emissions from these piles). The EPA, therefore, is not proposing to mandate such a practice. Industry cost estimates for a full enclosure with a capacity of 50,000 tons of clinker range from $10–$25 million in capital cost and $400,000–$500,000 annual operating cost (See Portland Cement Association, Clinker Piles, September 7, 2011, available in the rulemaking docket). We also are not proposing opacity or visible emission standards, for several reasons. If work practices are properly implemented, we believe fugitive emissions, including visible emissions, from clinker piles will be effectively controlled. Such emission limits would also be redundant with work practice requirements. Moreover, in many cases, the temporary, short-term nature of clinker piles would make it impractical to implement an emissions monitoring program that would be more effective than the proposed work practices.

We are proposing that one or more of the following control measures be used when adding clinker to a pile, during on-going clinker storage, and when reclaiming the clinker for processing, to minimize to the greatest extent practicable fugitive dust emissions from open clinker storage piles: Locating the source inside a partial enclosure (such as a three sided structure with tarp), installing and operating a water spray or fogging system, applying appropriate chemical dust suppression agents on the pile, use of a wind barrier or use of a tarp. The owner or operator must select, from the list provided, the control measure or combination of control measures that are most appropriate for the site conditions. We are allowing the owner or operator to select the most appropriate control measure or combination of measures for their situation.

We are proposing that the owner or operator must include as part of their operations and maintenance plan (required in § 63.1347) the fugitive dust

control measures that they will implement to control fugitive dust emissions from open clinker piles. These control measures would apply to the addition of clinker to the pile, on-going clinker storage and reclaiming the clinker for processing.

We are proposing the same standards for new sources as existing sources. In the case of a clinker storage pile, there is no essential difference between 'new' and 'existing'. These piles generally reflect temporary storage situations, and are not analogous to building a one-time stationary structure where there are opportunities for newly-constructed entities that do not exist for existing entities. The EPA consequently is proposing the same standards for both.

G. Affirmative Defense to Civil Penalties for Exceedances Occurring During Malfunctions

In response to comments, the EPA added to the September 9, 2010, final rule an affirmative defense to civil penalties for exceedances of emissions limits that are caused by malfunctions. Various environmental advocacy groups, as well as the Portland Cement Association (PCA), indicated that there had been insufficient notice of this provision. The EPA agreed and granted reconsideration. See 76 FR 28325 (May 17, 2011). We are proposing to retain the affirmative defense on reconsideration. This provision seeks to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' See 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). See generally *Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008) Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. Although ''continuous'' limitations, on the one hand, are required, there is also case law indicating that in many situations it is appropriate for the EPA to account for the practical realities of control technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973), the D.C. Circuit acknowledged that in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977); see also, *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 2012 U.S. App. LEXIS 1056 (Jan 19, 2012) (rejecting industry argument that reliance on the affirmative defense was not adequate). But see, *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. § 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

Petitions filed by environmental advocacy groups question the EPA's authority to promulgate the affirmative defense arguing, among other things, that the affirmative defense is inconsistent with the provisions of CAA sections 113(e) and 304(b) governing penalty assessment and citizen suits, respectively. The EPA's view is that the affirmative defense is not inconsistent with CAA section 113(e) or 304. Section 304 gives district courts' jurisdiction ''to apply appropriate civil penalties.'' Section 113(e)(1) identifies the factors that the Administrator or a court shall take into consideration in determining the amount of a penalty to be assessed, once it has been determined that a penalty is appropriate. The affirmative defense regulatory provision is not relevant to the amount of any penalty to be assessed. If a court determines that the affirmative defense elements have been established, then a penalty is not appropriate and penalty assessment pursuant to the section 113(e)(1) factors does not occur.

In exercising its authority under section 112 to establish emission standards (at a level that meets the stringency requirements of section 112), the EPA necessarily defines conduct that constitutes a violation. The EPA view is that the affirmative defense is part of the emission standard and defines two categories of violation. If there is a violation of the emission standard and the source demonstrates that all the elements of the affirmative defense are met, only injunctive relief is available. All other violations of the emission standard are subject to injunctive relief and penalties. A citizen suit claim under section 304 allows citizens to commence a civil action against any person alleged to be in violation of ''an emission standard or limitation under this chapter.'' The CAA, however, allows the EPA to establish such ''enforceable emission limitations.'' Thus, the citizen suit provision clearly contemplates enforcement of the standards that are defined by the EPA. As a result, where the EPA defines its emissions limitations and enforcement measures to allow a source the opportunity to prove its entitlement to a lesser degree of violation (not subject to penalties) in narrow, specified circumstances, as the EPA did here, penalties are not ''appropriate'' under section 304.

The EPA solicits comments on this issue of the EPA's authority to promulgate an affirmative defense. The EPA's view is that an affirmative defense to civil penalties for exceedances of applicable emission standards during periods of malfunction appropriately balances competing concerns. On the one hand, citizen enforcers are concerned about additional complications in their enforcement actions. On the other hand, industrial sources are concerned about being penalized for violations caused by malfunctions that they could not have prevented and were otherwise appropriately handled (as reflected in the affirmative defense criteria). The EPA has used its section 301(a)(1) authority to issue regulations necessary to carry out the Act in a manner that appropriately balances these competing concerns. However, the EPA also solicits comment on alternatives to, or variations on, the affirmative defense provisions promulgated in the 2010 final rule.

In its petition for reconsideration, the PCA expressed support for the affirmative defense, but maintains that

''the affirmative defense process that EPA codified in the final rules is cumbersome and will be exceedingly difficult for facilities to employ.'' The EPA is soliciting comment on the terms and condition of the affirmative defense. In recent rules promulgated under section 112 and 129, the EPA has revised certain terms and conditions of the affirmative defense in response to concerns raised by various commenters. The EPA is proposing to adopt those same revisions in this proposed rule. The EPA is proposing to revise the affirmative defense language to delete ''short'' from section 63.1344(a)(1)(i), because other criteria in the affirmative defense require that the source assure that the duration of the excess emissions ''were minimized to the maximum extent practicable.'' The EPA is also proposing to delete the term ''severe'' in the phrase ''severe personal injury'' in 63.1344(a)(4) because we do not think it is appropriate to make the affirmative defense available only when bypass was unavoidable to prevent severe personal injury. In addition, the EPA is proposing to revise section 63.1344(a)(8) to add ''consistent with good air pollution control practice for minimizing emissions.'' The EPA is also proposing to revise the language of 63.1344(a)(9) to clarify that the purpose of the root cause analysis is to determine, correct and eliminate the primary cause of the malfunction. The root cause analysis itself does not necessarily require that the cause be determined, corrected or eliminated. However, in most cases, the EPA believes that a properly conducted root cause analysis will have such results. Further, the EPA is proposing to revise 63.1344(b) to state that ''[t]he owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator in a semiannual report with all necessary supporting documentation, that it has met the requirements set forth in section 63.1354(c) of this subpart.'' This report must be included in the first semiannual report, required by section 63.1354(b)(9), after the initial occurrence of the violation of the relevant standard. If the semiannual report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second semiannual report due after the initial occurrence of the violation of the relevant standard. See proposed regulatory text for other proposed minor wording changes to improve clarity.

H. Continuously Monitored Parameters for Alternative Organic HAP Standard (With THC Monitoring Parameter)

In the September 2010 final rule, the EPA promulgated an alternative standard for non-dioxin organic HAP, based on measuring the organic HAP itself rather than the THC surrogate. Section 63.1343(b)(1) provides two options for meeting a standard for organic HAP. One is to meet a THC standard of 24 ppmvd; the other is to meet a limit of 9 ppmvd of total organic HAP. This equivalent alternative standard is intended to provide additional flexibility in determining compliance, and it would be appropriate for those cases in which methane and ethane comprise a disproportionately high amount of the organic compounds in the feed because these non-HAP compounds could be emitted and would be measured as THC. The specific organic compounds that are to be measured to determine compliance with the equivalent alternative standard are benzene, toluene, styrene, xylene (ortho-, meta-, and para-), acetaldehyde, formaldehyde and naphthalene. Compliance with the equivalent alternative standard under the September 2010 standard will be determined through organic HAP emissions testing using EPA Method 18 or 320, as appropriate for the compound of interest. The 2010 rule further requires that each source complying with the alternative standard establish a site-specific THC limit to be met continuously. The site-specific THC limit will be measured as a 30 day rolling average, with an annual compliance test requirement. It would be correlated with the organic HAP limit and is therefore not tied to the THC standard of 24 ppmvd. We granted reconsideration on the level of this site-specific THC limit used as a continuously monitored parameter for those sources selecting the alternative HAP compliance method. See 76 FR 28318 (May 17, 2011).

Since THC includes compounds that are not considered to be hazardous, either of the two standards are considered to be reasonable.

While the September 2010 final rule required an organic HAP limit of 9 ppmvd, a recent review of the method detection limits used to measure organic HAP revealed that three times the representative method detection level (3*RMDL) is actually 12 ppmvd, therefore, we propose to revise the alternative organic HAP limit to 12 ppmvd. As discussed in the final rule, the expected measurement imprecision for an emissions value at or near the method detection level is about 40 to 50 percent and decreases to a consistent 10 to 15 percent for values that are three times the method detection level. See 75 FR 54984 (September 9, 2010); see also section D above. Thus, measured values less than three times the representative method detection level are highly uncertain and therefore not reasonable for compliance determinations. The 3*RMDL of 12 ppmvd was determined as follows: we determined method detection capabilities for Method 320 and Method 18 as appropriate for the various compounds (e.g., Method 320 for aldehydes, Method 18 for aromatic hydrocarbons (arenes)). This approach is consistent with procedures practiced by the better performing testing companies and laboratories using sensitive analytical procedures. We determined for each of the organic HAP the expected method detection level for the respective method based on internal experience and method capabilities reported by testing companies. With these reported values, we identified the resulting mean of the method detection levels, adjusted them for dilution and moisture, summed them, and then multiplied the sum by three to determine the representative detection level (RDL). The resulting RDL value was found to be 11.2 ppmvd @ 7 percent oxygen (O_2), dry. This value is greater than the final 9 ppmvd @ 7 percent O_2, dry, in the final rule. We are, therefore, proposing to adjust the total organic HAP limit to 12 ppmvd @ 7 percent O_2, dry (rounded up from the 11.2 ppm RDL). At this level, we believe that currently available emissions testing procedures and technologies can be used to provide measurements of sufficient certainty for sources to demonstrate compliance. A detailed discussion of the use of the RDL to arrive at the proposed organic HAP limit is found in the Portland Cement Reconsideration TSD, section 3, which can be found in the docket for this rulemaking.

A consequence of this analysis is that the accuracy of the analytic methods for organic HAP appear to be insufficient to allow sources to scale up their site-specific THC limit based on the degree to which the measured organic HAP levels were below the organic HAP limit—the organic HAP limit, even as proposed to be revised, is at the reliable limit of detection as just explained. Therefore, this proposed rule retains the provision whereby the site-specific THC operating parameter is established at the same time the performance test is conducted for organic HAP. If the site-specific THC operating parameter is

exceeded, then the kiln would have to be retested to determine compliance with the organic HAP limit. This proposed rule would further require that the tests for organic HAP and THC be repeated annually to establish a new annual site-specific THC parameter reflecting the organic HAP level. We also are proposing, similar to the PM compliance test procedure, that the highest 1-hour average THC concentration measured during the 3-hour organic HAP test, be used as the site-specific THC parameter, and are allowing facilities to extend the testing time (or number of tests) if they believe extended testing is required to adequately capture THC variability over time. The EPA specifically solicits comment on the changes on the organic HAP limit. In addition, we solicit comment on if it would it be appropriate to allow sources to scale up their site-specific THC limit based on the degree to which the measured organic HAP levels are below the organic HAP limit.

I. Allowing Sources With Dry Caustic Scrubbers To Comply With HCl Standard Using Performance Tests

To demonstrate compliance with the HCl emissions limit, the September 2010 final rule allows sources equipped with wet scrubbers to comply with the HCl standard by means of periodic performance tests rather than with continuous monitoring of HCl with a CEMS (see § 63.1349(b)(6)). We reasoned that a source that uses a limestone wet scrubber for HCl control will have minimal HCl emissions even if kiln inputs change because limestone wet scrubbers are more efficient in removing HCl than they are required to be, to meet the standard. Sources electing to comply by means of stack tests must establish continuously monitored parameters including liquid flow rate, pressure and pH. Sources using a limestone wet scrubber are required to perform an initial compliance test using Method 321 in Appendix A to 40 CFR part 63 and to test every 30 months thereafter.

In their petition, industry stakeholders indicated that this compliance option should not be limited to wet scrubber equipped units, but should also be available for units equipped with caustic scrubbers, in part because some sources will be equipped with dry scrubbers (due to water shortages) and should have the same operating flexibilities as wet scrubber equipped kilns.

A recent review of data from a vendor of acid gas controls using a standard hydrated lime and a high performance hydrated lime at a U.S. cement manufacturing plant, revealed that HCl removal from dry scrubbers on kilns ranged from 90 to 95 percent HCl removal, depending on lime injection rates (Lhoist North America, Cement Industry Experience, DSI for Acid Gas Control, October 5, 2011). The results also showed the plant could meet the 3 ppm HCl limit. The EPA also evaluated HCl removal efficiency using dry sprayer absorber with a fabric filter as part of the electric utility generating MACT rulemaking. Removal efficiencies ranged from 95 percent to nearly 100 percent with an average of about 99.8 percent (Hutson to Nizich, HCl control using SDA/FF, November 29, 2011). In addition, information from the National Lime Association (*http://www.lime.org/uses_of_lime/environmental/flue_gas.asp*) and the Institute for Clean Air Companies (*http://www.icac.com/i4a/pages/index.cfm?pageid=3401*) report HCl emissions reductions using dry lime injection technology of 95 to 99 percent from coal-fired boilers in the electric utility industry, from municipal waste-to-energy facilities and from other industries. In the secondary aluminum industry, reductions in HCl emissions greater than 99 percent have been achieved (National Lime Association, Flue Gas Desulfurization, *http://www.lime.org/uses_of_lime/environmental/flue_gas.asp*).

Given these high reported removal efficiencies, we propose to extend the same option provided to kilns equipped with wet scrubbers to dry scrubber-equipped kilns. Thus, kilns with either type of scrubber could demonstrate compliance with the HCl limit by means of an initial and periodic stack test rather than with continuous compliance monitoring with a CEMS. In order to assure that the dry lime injection equipment is operated effectively between tests, the proposed amendment would require that the lime injection rate used during the performance test demonstrating compliance with the HCl limit be recorded and then continuously monitored between performance tests to show that the injection rate remains at or above the rate used during the performance test.

We are also proposing an additional alternative for all kilns equipped with a dry or wet scrubber (and, under this proposal, could therefore do periodic HCl performance testing and parametric monitoring). Where either wet or dry scrubbers are used, we are proposing that an owner or operator would have the option of using SO_2 monitoring as a continuously monitored parameter for purposes of compliance monitoring. Because HCl is a water-soluble compound and because it has a large acid dissociation constant (i.e., HCl is a strong acid), it will be more rapidly and readily removed than SO_2 from a gas stream treated with either caustic sorbents (e.g., lime, limestone) or plain water. We acknowledge that at proposal (see 74 FR 21154, May 6, 2009) we rejected setting a standard (as opposed to a continuously monitored parameter) that used SO_2 as a surrogate for HCl because we had no data that demonstrated a direct link between HCl emissions and SO_2 emissions. However, pilot-scale tests by the EPA at its Multi-pollutant Control Research Facility support the use of the more easily measured SO_2 as a surrogate for HCl where either wet or dry scrubbers are used. See Docket item EPA–HQ–OAR–2009–0234–3893. Further, we are aware that there are existing kilns equipped with SO_2 CEMS and that this monitoring technology is less expensive and more mature than HCl CEMS. Thus, we are proposing that SO_2 is an indicator for HCl compliance, and that monitoring the emissions of SO_2 will provide a reliable indication of HCl removal, making SO_2 monitoring an appropriate parameter for monitoring continuing compliance.

Owners or operators of kilns equipped with dry or wet scrubbers that choose to use SO_2 monitoring would need to conduct an initial performance test for HCl and establish the SO_2 operating limit equal to the highest 1 hour average recorded during the HCl performance test, so that there is an indication of proper operation of the HCl control device. The owner or operator of a kiln controlled using either a dry or wet scrubber that chooses to monitor SO_2 would not be required to also establish continuously monitored parameters reflecting the performance test results, such as lime injection rate for a dry scrubber and liquid flow rate, pressure and pH for a wet scrubber. Deviation from any established parameter level or established SO_2 operating level would trigger a requirement to retest for HCl in order to verify compliance with the HCl limits and to verify or re-establish the parameter levels.

At a minimum, a repeat performance test to confirm compliance with the HCl emissions limit and to reset the SO_2 limit and monitoring parameters is required every 5 years. We are requesting comment on the efficacy of continuously monitoring SO_2 as a continuously monitored parameter in lieu of continuously monitoring HCl control device parameters, and also solicit comment on testing every 30 months for HCl for purposes of

monitoring compliance with the HCl emissions limit.

J. Alternative PM Limit

Some kilns combine kiln exhaust gas with exhaust gas from other unit operations, such as the clinker cooler, as an energy saving practice. The September 2010 final rule sought to accommodate commingled flows from the kiln and clinker cooler by providing a site specific PM limit. See section 63.1343(b)(2). In its reconsideration petition, the PCA pointed out, however, that other flows besides the exhaust gas flow from the clinker cooler can be commingled as well. The petitioner provided the example of coal mill exhaust and exhaust from an alkali by-pass as instances of additional flows that can be commingled with the exhaust gas flow from the kiln. The petitioner observed that without an allowance for these additional flows, the site specific PM limit is stricter than the EPA intended (since the PM concentration will be divided by a lower number in the implementing equation), and penalizes the energy-saving practice of commingling these flows.

The agency agreed with the petitioner that the alternative PM equations for existing and new sources contained in the final rule do not adequately account for commingled exhaust gas flows from sources other than the clinker cooler, and granted reconsideration for this reason. See 76 FR 28325 (May 17, 2011). We believe that although the form of the equation is correct, the equation is not written to accommodate sources other than exhaust gases from the clinker cooler. We are proposing to revise the equation so that it includes exhaust gas flows for all potential sources that would potentially be combined, including exhausts from the kiln, the alkali bypass, the coal mill, and the clinker cooler, for an existing kiln, the EPA is proposing the following equation:

$$PM_{alt} = 0.0060 \times 1.65 \times (Q_k + Q_c + Q_{ab} + Q_{cm})/(7000)$$

Where:

PM_{alt} = The alternative PM emission limit for commingled sources.

0.006 = The PM exhaust concentration (gr/dscf) equivalent to 0.07 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.[12]

1.65 = The conversion factor of lb feed per lb clinker.

Q_k = The exhaust flow of the kiln (dscf/ton raw feed).

Q_c = The exhaust flow of the clinker cooler (dscf/ton raw feed).

Q_{ab} = The exhaust flow of the alkali bypass (dscf/ton raw feed).

Q_{cm} = The exhaust flow of the coal mill (dscf/ton raw feed).

7000 = The conversion factor for grains (gr) per lb.

If exhaust gases for any of the sources contained in the equation are not commingled and are exhausted through a separate stack, their value in the equation would be zero. The alternative PM equation for new sources is identical to the existing source equation except the PM exhaust concentration used in the equation is 0.002 grains per dry standard cubic foot, which is equivalent to the new source PM limit of 0.02 lb/ton clinker.

K. Standards During Startup and Shutdown

In the final NESHAP, the EPA established separate standards for startup and shutdown which differ from the main standards. These standards require kilns to meet numerical limits for each pollutant regulated by the rule, each standard to be measured using a CEMS over an accumulative 7-day rolling average. 75 FR 54991 (September 9, 2010). Industry petitioned the EPA to reconsider these standards claiming lack of notice, but the EPA denied these petitions because the agency had already provided ample opportunity for comment which petitioners had used. See 76 FR 28323 (May 17, 2011). The D.C. Circuit dismissed all challenges to these startup and shutdown provisions (see 665 F 3d at 189). The EPA did grant reconsideration on several technical issues related to startup and shutdown—certain aspects of CEM-based monitoring of mercury and PM during startup and shutdown—issues which would be moot if the EPA adopts the approach proposed below—and having an HCl limit of zero for kilns not equipped with CEMS (see 76 FR 28325 (May 17, 2011)).

The EPA is proposing to retain the startup and shutdown standards for mercury and THC, to amend the startup and shutdown standards for PM to be consistent with the proposed numeric levels in this proposal, and to amend the level of the startup and shutdown standard for HCl to be 3 ppm in all circumstances.

The EPA is further proposing to clarify that startup begins when the kiln's induced fan is turned on and continues until continuous raw material feed is introduced into the kiln. Shutdown begins when feed to the kiln is halted. Thus, during startup and shutdown, as defined, a kiln would not be firing coal or coke and would not be introducing feed material into the kiln continuously. HAP emissions from cement kilns are attributable almost entirely to one or the other of these feeds, with raw materials contributing the great preponderance. In addition, kilns burn fuels during startup and shutdown which are cleaner than coal and coke (natural gas is used for the most of the startup). Thus, HAP emissions during startup and shutdown necessarily should be far less than the numerical limits in the standards since the kiln will not be introducing raw materials, and will be burning fuels which are cleaner than its normal fuels.

Accordingly, the EPA is further proposing to change the means of monitoring for compliance with the startup and shutdown standards. Rather than require monitoring by a CEM or by stack testing, the EPA is proposing that a source keep records of the volumes of fuels introduced into the kiln during startup and shutdown to verify that raw materials are not introduced into the kiln, although, by definition, if raw materials are introduced continuously into the kiln, the kiln is not operating in startup and shutdown and the monitoring requirements of the main standards would therefore apply. Kiln owners and operators would then make conservative assumptions as to the combustion efficiency of the kiln so as to reasonably estimate destruction of organics, and include mass balance calculations showing that the startup/shutdown standards would not be exceeded.

These proposed recordkeeping requirements would serve as the basis for compliance monitoring. The EPA believes that these proposed recordkeeping requirements are both sufficient to yield reliable information for the startup and shutdown periods, and to establish a source's compliance or non-compliance with the startup and shutdown standards. The EPA also believes that this proposed requirement would satisfy the requirements of 40 CFR section 70.6(c)(1) which requires that Title V permits shall contain ''monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.''

The EPA is further proposing that the standard for HCl during startup and shutdown be 3 ppmvd under all circumstances, and thus is proposing to eliminate the current provision that the startup and shutdown standard be zero for kilns measuring compliance by means other than a CEM. As shown in the petitions for reconsideration, HCl can be formed even when normal fuels and raw materials are not being

[12] Note that this figure would change correspondingly if the EPA were to amend the existing source PM standard. The same is true of the PM term in the new source equation.

introduced into the kiln (for example, from residual chlorides in the kiln refractory). See PCA Petition for Reconsideration Exh. 1. Consequently, the promulgated limit of zero is technically inappropriate, and the EPA is proposing to amend it to 3 ppmvd, the same standard which applies in all other operating modes. Monitoring during startup and shutdown would be accomplished by recordkeeping, as explained above.

The EPA also solicits comment on whether the numeric standards during startup and shutdown should be amended to provide work practices, rather than numeric standards. Work practices could require operation of emission control devices during startup and shutdown, minimizing the time periods of startup/shutdown, and following manufacturer's best practices. We rejected work practices for startup and shutdown periods in the 2010 final rule because the commenters requesting such standard failed to demonstrate why it is ''not feasible * * * to prescribe or enforce an emission standard'' for mercury, THC, PM and HCl during startup and shutdown at cement kilns, within the meaning of section 112(h) of the Act. See NESHAP from the Portland Cement Manufacturing Industry Response to Comments Received on Proposed Rule Published on May 6, 2009, 74 FR 21135, August 6, 2010 at p. 184.

L. Coal Mills

Cement kilns burn coal as their main fuel, and mill the coal before firing it. From the standpoint of air emissions, these coal mills are sometimes physically distinct from the cement kiln, generating emissions solely attributable to the coal mill and emitting exhaust through a dedicated stack. However, some kilns are configured so that coal mill emissions are commingled with kiln exhaust and the emissions are discharged through the main kiln stack. Finally, there are some configurations whereby kiln emissions are routed to the coal mill and discharged through the coal mill stack. This part of the preamble discusses the regulatory treatment of these different scenarios.

First, the EPA has promulgated new source performance standards (40 CFR part 60 subpart Y) for coal mills. See 74 FR 51952 (October 8, 2009). These standards apply to coal mills, including coal mills at cement manufacturing facilities, which emit through a dedicated stack. Subpart Y standards do not apply to coal mills at cement facilities whose only heat source is kiln exhaust. See section 60.251(j) (definition of indirect thermal dryer). This leaves ambiguous, or partially ambiguous, the regulatory treatment of the second and third situations mentioned above: A kiln whose coal emissions are discharged through the main kiln stack, and the coal mill which receives some exhaust from the cement kiln so that some portion of the coal mill exhaust can reflect cement kiln emissions. Because we did not address these issues in the 2010 final NESHAP for Portland cement kilns, we granted reconsideration in order to do so. See 76 FR 28326 (May 17, 2011).

A cement kiln which commingles emissions from its coal mill with all other emissions and discharges through kiln emission points would have to meet all of the NESHAP. In the case of PM, the additional flow from the coal mill would be accounted for in the equation used to determine PM contributions from commingled flows. See section K above.

In the case of a coal mill which receives and discharges some of the cement kiln exhaust, the regulatory concern is that this re-routing of kiln exhaust not result in uncontrolled HAP emissions.

Our basic principle for this situation could be that the kiln demonstrate that it is meeting all of the NESHAP standards for pollutants not regulated under the subpart Y coal mill standard, that is mercury, THC and HCl. Because the subpart Y standards contain a PM standard predicated on use of fabric filter control technology, we do not believe it necessary to account for diverted PM emissions.

We are soliciting comment on the following compliance mechanism for the mercury, THC and HCl standards in this situation: The sum of the mercury, THC and HCl in the kiln exhaust diverted to the coal mill, and the kiln exhaust exhausted in the main kiln stack, must not exceed the subpart LLL NESHAP emission limits for each respective HAP or HAP surrogate. Under this approach, the rule could contain requirements to document the contribution of the emissions diverted to the coal mill. With respect to THC and HCl, because coal may be a source of these emissions, we are soliciting comment on a requirement that performance tests for THC and HCl be performed upstream of the coal mill. For mercury, we are soliciting comment on a requirement that tests be required downstream to account for any mercury removal in the coal mill air pollution control device (APCD), and to avoid double counting emissions of mercury from mercury that becomes re-entrained in the coal, which is then burned by the cement kiln (which emissions are otherwise accounted for in the NESHAP).

We note further that an analogous situation is when a cement kiln has an alkali bypass which receives and exhausts emissions from the kiln. We are proposing that these emissions be subject to controls reflecting the same principle—the total emissions of the kiln and alkali bypass must meet the subpart LLL NESHAP. We are also proposing to use the same monitoring procedures to document compliance. The one (slight) exception is for PM. Because there is no independent PM standard for an alkali bypass (unlike the situation for coal mills, where subpart Y regulates PM emissions), the summed PM emissions from the kiln and alkali bypass would have to be equal to or less than the PM limit in the subpart LLL NESHAP. Tests for PM from the alkali bypass would be downstream of the alkali bypass APCD to account for those emission reductions. Though we are not proposing the coal mill requirements in this action, we have placed the appropriate regulatory text in the proposed rule language to allow comment on actual rule language.

We expand on these monitoring provisions below.

1. Mercury. Although mercury from the main stack is monitored using a CEMS, there is no need for such monitoring for the gas streams from the coal mill. The gas stream to the coal mill is small in comparison to the kiln exhaust, operation of the coal mill is intermittent, and the cost of requiring additional CEMS for coal mills would be overly burdensome. Instead, the performance tests for mercury could be conducted at such a coal mill once per year, and, as explained above, that the tests be conducted downstream of the coal mill. Performance tests for mercury could be conducted using either Methods 29 or 30B in Appendix A–8 to 40 CFR Part 60. These performance tests could be required annually until the tested mercury levels are below the method detection limits for two consecutive years, after which tests may be conducted every 30 months. If test results at any time exceed the method detection limit, annual performance testing could again be required until mercury levels are below the method detection limit for two consecutive years. The results of the performance test could then be summed with the emissions from the kiln stack to determine compliance with the mercury emissions limit. Since kiln stack emissions are measured continuously with a CEMS, the coal gas emissions could be normalized on both a CEMS and production basis (lb/MM ton

clinker) in order to be summed with the kiln stack emissions. To do so, the flow rate to the coal mill could be continuously monitored. Using the results of the annual performance test and the continuous flow rate from the coal mill, the owner or operator could develop a mercury hourly mass emission rate for the coal mill. Hourly mercury emissions from the coal mill could be summed with the mercury emissions from the kiln to determine continuous compliance as follows:

((Qab×Cab) + (Qcm×Ccm) + (Qks×Cks))/ P ≤ MACT Limit

Where:

Qab = Alkali bypass flow rate (volume/hr)
Cab = Alkali bypass concentration (lb/dscf)
Qcm = Coal mill flow rate (volume/hr)
Ccm = Coal mill concentration (lb/dscf)
Qks = Kiln stack flow rate (volume/hr)
Cks = Kiln stack concentration (lb/dscf)
P = Kiln production rate (million tons clinker/hr)
MACT Limit = Limit for mercury (55 lb mercury/MM tons clinker)

This equation requires all values to be at or corrected to 7 percent O_2.

Thus, if the normalized test results at the coal mill control device outlet shows mercury emissions of 10 lb/MM tons clinker, emissions from the kiln should be less than 45 lb/MM tons of clinker to be in compliance with the proposed kiln mercury emissions limit. See section 63.1350(k)(5).

For kilns also equipped with an alkali bypass, the same procedure as that for the coal mill would apply. Where a portion of kiln gases are diverted to a coal mill and to an alkali bypass, emissions from the coal mill and alkali bypass would be tested, normalized and summed and with the mercury emissions from the kiln to determine compliance with the emissions limit.

2. THC and HCl. Because THC and HCl are concentration-based limits, the compliance demonstration could differ in certain details from the procedure described above for the production based limits for mercury. Kiln stack emission limits (to be continuously monitored) could be calculated taking into consideration the volumetric exhaust gas flow rates and concentrations of all applicable effluent streams (kiln stack, coal mill, and alkali bypass) for the kiln unit as follows:

$$\frac{(Qab \times Cab) + (Qcm \times Ccm) + (Qks \times Cks)}{(Qab + Qcm + Qks)} \leq MACT\ Limit$$

Where:

Qab = Alkali bypass flow rate (volume/hr)
Cab = Alkali bypass concentration (ppmvd)
Qcm = Coal mill flow rate (volume/hr)
Ccm = Coal mill concentration (ppmvd)e
Qks = Kiln stack flow rate (volume/hr)
Cks = Kiln stack concentration (ppmvd)
MACT Limit = Limit for THC or HCl (ppmvd)

This equation requires all values to be at or corrected to 7 percent O_2.[13]

In order to determine the flow rates and concentrations of THC and HCl in the coal mill and alkali bypass streams, the source could test annually using the appropriate test method and could monitor the flow rate of the kiln stack with CMS. For HCl, the performance test could be performed using Method 321 in Appendix A to 40 CFR Part 63. For measurement of THC, Method 25A in Appendix A–7 to 40 CFR Part 60 could be required. With these data, the concentration of THC and HCl that must be monitored in the CEMS in order to demonstrate compliance with the kiln MACT limit under this proposal can be calculated by solving for Cks (kiln stack concentration) from the equation above, as shown:

$$Cks \leq \frac{\left(MACT\ Limit \times (Qab + Qcm + Qks)\right) - (Qab \times Cab) - (Qcm \times Ccm)}{Qks}$$

This equation is based on the following:

- The total allowable mass emissions of THC and HCl for the kiln unit can be determined with the sum of all flow rates (coal mill, alkali bypass and kiln stack) and the applicable NESHAP limit (THC or HCl) concentration. This yields the total allowable mass emissions per unit of time for the kiln unit according to the MACT limits and the site specific flow rates for the coal mill, alkali bypass and kiln stack.
- By testing the coal mill and alkali bypass streams for concentration and flow rate, the actual mass of THC and HCl emitted per unit of time can be determined.
- Subtracting the actual mass emissions of THC and HCl leaving the coal mill and alkali by pass from the total allowable mass emissions for the kiln unit determines the remainder of allowable mass emissions that can be emitted through the kiln stack.
- With knowledge of the flow rate at the kiln stack (measured by CMS) and the allowable mass emissions (i.e. remainder) that can be emitted through the kiln stack, a site specific concentration can be determined. The equation above provides a simplified approach to determining this value.

The following example indicates how compliance could be demonstrated. In this example, we assume a kiln stack, coal mill and alkali bypass with the following volumetric flow rates and THC concentrations:

Effluent stream	Flow rate (dscm/hr)		THC concentration (ppmvd) (@7% O_2)		Notes	MACT LIMIT (ppmvd) (@7% O_2)
Alkali Bypass	Qab	38,233	Cab	56	Determined through test	24
Coal Mill	Qcm	57,349	Ccm	56	Determined through test.	
Kiln Stack	Qks	286,746	Cks	?	Flow rate monitored by CMS.	

[13] The proposed approach is conceptually similar to that for PM from multiple sources discussed in K. above—an equation which accounts for the flow-weighted concentration of PM from all sources.

With the simplified equation provided above, the THC value that must not be exceeded in the kiln stack (verified with CEMS) is determined as follows:

$$Cks \leq \frac{\left(24 \times (38{,}233 + 57{,}349 + 286{,}746)\right) - (38{,}233 \times 56) - (57{,}349 \times 56)}{286}, 746$$

Using the equation above, Cks is less than or equal to 13.3 ppmvd @ 7 percent O_2. This value could be monitored by a CEMS in order to demonstrate compliance with the NESHAP limit—i.e., to demonstrate that the summed values are less than or equal to the standard of 24 ppmvd.

The requirements for THC and HCl could be essentially the same as that for mercury (except that limits are concentration based as opposed to production-normalized mass based): the flow-weighted averages of THC and HCl could be less than or equal to the subpart LLL NESHAP. The kiln stack emissions are measured by a CEMS (for THC) or by other applicable means (for HCl). The flow-weighted contributions from other sources (the alkali bypass and the kiln exhaust diverted to the coal mill) could be assessed by annual testing and applied continuously with flow being measured continuously (explained further in the next paragraph). As noted above, testing of the kiln exhaust diverted to the coal mill could be conducted upstream of the coal mill for THC and HCl so that only the kiln exhaust contribution is assessed.

To monitor compliance continuously, the gas flow rate from the coal mill could be monitored continuously. This flow rate measured during the annual performance test could be the maximum flow rate allowed during the year. If a higher flow rate is observed, the owner/operator could retest THC and HCl to obtain a new flow-weighted concentration which would be summed with the kiln main stack THC or HCl concentration to determine whether the kiln is still in compliance. Because of this requirement, the owner/operator should perform their test at a flow rate that would cover the range of conditions expected.

3. PM. As explained above, in the situation where a cement kiln diverts some exhaust to an integrated coal mill, the coal mill could meet the subpart Y standards, and the kiln could meet the subpart LLL NESHAP standard but would not have to account for the diverted exhaust in doing so. In all other situations, PM contribution from a coal mill (or from an alkali bypass) could be accounted for via the equation discussed in section J above. If the alkali bypass discharges separately, it would have to sum its PM emissions with those from the main stack and the summed emissions would have to be less than or equal to the subpart LLL NESHAP standard for PM.

As a result of this revision, we would also include a revised definition of ''kiln'' to clarify that coal mills using kiln exhaust gases in their operation are considered to be an integral part of the kiln (and hence subject to these standards). We would also include a definition for ''in-line coal mill'' for those coal mills using kiln exhaust gases in their process. The definition would exclude coal mills with a heat source other than the kiln or coal mills using exhaust gases from the clinker cooler.

M. PM Standard for Modified Sources Under the NSPS

The EPA adopted the level of the new source standard under the NESHAP as the NSPS for both new and modified kilns and clinker coolers. See 75 FR 54996 (September 9, 2010). As the PCA noted in its reconsideration petition, there need not be functional equivalence between the NESHAP and NSPS PM limits for modified kilns and clinker coolers. The PCA also noted that the NSPS for modified kilns and clinker coolers could have associated costs which need to be accounted for pursuant to CAA section 111(a)(1). Since such kilns and clinker coolers would not be subject to the section 112(d) new source standard, any costs for such modified kilns and clinker coolers to control PM to the new source limit could not be attributed to the section 112(d) new source limit. In addition, the PCA noted that existing Portland cement kilns cannot be assumed to find ways to avoid triggering the NSPS modification criteria when making physical or operational changes due to the stringency of the newly adopted standards for PM.

The EPA believes that the PCA's arguments on this point have merit. Under the September 2010 final NESHAP, existing kilns and clinker coolers are subject to the PM limit of 0.04 lb/ton clinker. If the kiln or clinker cooler undergoes modification, it would continue to be subject to 0.04 lb/ton limit, but would now be subject as well to the NSPS limit of 0.01 lb/ton clinker. Notwithstanding that there are independent justifications under section 111 that could justify this result (see *PCA* v. *EPA,* 665 F 3d at 190–91), the EPA believes, subject to consideration of comment, that it is more appropriate for modified kilns and clinker coolers to meet the NESHAP PM limit for existing sources. We are proposing that existing kilns and clinker coolers that are subject to the NESHAP existing source emissions limit would continue to be subject to that limit and not to the more stringent limit for new sources under the NSPS. This would be a limit of 0.07 lb per ton clinker, three-run average based on Method 5 stack testing as explained in section D above. The parametric monitoring using a CPMS would likewise apply, as would the requirement of annual stack tests. We have justified the PM standard for modified kilns and clinker coolers under section 111 and need not repeat that rationale here. See *PCA* v. *EPA,* 655 F. 3d at 190–91. This analysis continues to apply when the standards are based on stack tests rather than CEMS and no longer use a 30-day averaging period. The EPA also finds that the costs of meeting the incrementally more stringent proposed new source limit of 0.02 lb/ton clinker (three-run average) are not justified for modified kilns and clinker coolers. For an existing kiln to reduce emissions from 0.07 to 0.02 lb/ton clinker would result in a modest reduction in PM emissions at a cost of more than $21,000 per ton of PM reduced (the extra cost being attributable to more frequent replacement of bags) and greater still if sources are able to comply with the proposed limit by using controls other than a fabric filter or different types of fabric filters.

N. Proposed NESHAP Compliance Date Extension for Existing Sources

Under section 112 (i)(a)(3) of the Act, the EPA may reset compliance dates for section 112 (d) emission standards if the EPA amends the standards themselves (as opposed to amending some ancillary feature of the standards relating to implementation). See *NRDC* v. *EPA,* 489 F. 3d 1364, 1373–74 (D.C. Cir. 2007).

Such a resetting would be appropriate if the standards are changed in such a way as to warrant more time for compliance, either to develop necessary controls or to otherwise significantly alter control strategy. Cf. *PCA* v. *EPA,* 655 F. 3d at 189. (Staying NESHAP standards for clinker piles because ''the standards could likely change substantially. Thus, industry should not have to build expensive new containment structures until the standard is finally determined''). The EPA believes that may be the case here. Subject to consideration of public comment, the proposed amendments to the PM standard could significantly alter compliance strategies for all of the regulated HAP. The EPA is accordingly proposing that the compliance date for the PM, THC, mercury and HCl standards for existing sources for kilns, clinker coolers and raw material dryers be extended until September 10, 2015, a 2-year extension of the current compliance date.[14] We believe that this date would require compliance ''as expeditiously as practicable'' as required by section 112 (i)(3)(A) of the Act.[15]

The EPA is proposing to amend the standards for PM, changing the compliance regime from CEMS-based to stack-test based, changing the averaging time for compliance, and changing the level of the standard. These proposed changes, in and of themselves, may occasion the need for additional time to study the possibility of different control strategies than are available under the 2010 final rule.

The EPA believes that different compliance strategies may now be available. The 2010 PM standard is achievable but requires the most advanced fabric filters, membrane bags, frequent bag replacement and maintenance. See Docket item EPA–HQ–OAR–2002–0051–3438. The proposed standard of 0.07 lb/ton of clinker (3-run stack test) may be achievable by other means. Potential compliance strategies include use of electrostatic precipitators (ESP) (or an ESP with a polishing baghouse or cyclone), or using a different type of baghouse. Baghouses could, for example, be sized smaller, could use cloth rather than membrane bags, or could use other variants The proposed change in the PM limit may also allow some sources to comply using their existing PM control device. As a result, they may be able to cancel a planned upgrade to membrane fabric filters or a replacement of their existing device with a new one. The PM standard also applies to clinker coolers, and sources may be able to meet the 0.07 lb/ton clinker standard with an existing control device for a clinker cooler. See PCA, The Impact of a Change in the Cement NESHAP PM limit on Compliance Strategies and Schedules, April 9, 2012; and PCA letter, Implications of Altered PM Limit on PCA Technology Analysis, May 24, 2012. We note that in the database for the 2010 standards, six cement kilns with ESP already were meeting the 0.07 lb/ton clinker standard for PM which we are proposing here. See Portland Cement Reconsideration TSD, Section 9. The proposal to amend the standard for PM has implications for all of the standards, not just those for PM. The standards for mercury, HCl and THC all rely (or may rely) on control strategies involving injection and removal of added particulates, whether in the form of activated carbon, or dry or wet sorbent injectant. See Docket item EPA–HQ–OAR–2002–0051–3438, section 2. A change in the PM standard thus affects these collateral PM control strategies as well. For example, it may be possible for a single PM control device to meet the proposed 0.07 lb/ton clinker standard and also control the auxiliary PM collected from control of the other HAP, making polishing filters unnecessary.[16] Conversely, a central baghouse to meet a 0.07 lb/ton clinker standard may be sized smaller, but this may necessitate adding polishing filters to capture PM from control of the other HAP.

New compliance strategies require time to implement. New engineering studies are needed, potential suppliers identified, and a new bidding/procurement process undertaken. Significant plant redesign, in the form of new ductwork and new fan design, and changes in the main control equipment may be needed. See U.S. EPA, Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, October 2002. Depending on the type of control, this normally requires 15–27 months. Multiple control systems will take longer. Id. Installation of controls at cement kilns normally occurs during winter months (to coincide with kiln outages during low production seasons). Putting this together, it tentatively appears that summer of 2015 would be an expeditious compliance date, and the EPA is proposing to extend the existing source compliance date until September 9, 2015.

The EPA also solicits comment on a shorter extension. The industry here is not starting from scratch. There should be on-going planning to meet the standards promulgated in 2010 which could shorten the time needed to come into compliance with these proposed revised standards (should the EPA adopt them). Moreover, as explained below, we calculate that sources will need to design controls to meet virtually the same average performance for PM under the proposed standard of 0.07 lb/ton clinker (Method 5) as they would under the promulgated standard of 0.04 lb/ton clinker (30-day average). Again, this could dovetail with on-going compliance efforts and shorten the time needed to come into compliance with a revised standard. Consequently, the EPA solicits comment on a compliance extension until September 2014 (1 year from the current compliance date). This type of extension would recognize that additional time for compliance is needed, and accommodate cement kilns' operating cycle (leaving winter months for control equipment deployment), but recognize that the industry is not starting from scratch. Commenters should take into account that individual sources could still apply to permit writers for an additional extension of one year under section 112 (i)(3)(B) in instances where it is not possible to install control equipment within the specified period.

Notwithstanding that we believe that the proposed PM standard may create new and lower cost opportunities for compliance, we believe the overall emission reductions from the standard to be roughly the same (except that full compliance will not occur until September 9, 2015 as noted below). We believe that sources will still need to design to meet essentially the same daily average as they would under the 2010 standard. That is, sources do not design to meet a standard, but rather to meet a level comfortably lower. They do so in order to provide a compliance margin on those days where emissions rise due to inherent and uncontrollable variability. See Docket item EPA–HQ–OAR–2002–0051–3438, section 2. The difference is too small to be reliably quantified. We have recalculated a design value (i.e. the level to which kilns would design to meet the existing source standard) under the proposal.

[14] This date would be approximately 2 years and 10 months from the December 20, 2012, signature date for final action called for in the draft settlement agreement between EPA and PCA. See 77 FR 27055 (May 8, 2012).

[15] If the EPA were to adopt a THC standard of 15 ppmvd (see section III.C.2 above), an extension of 3 years from the date of final action would be needed since many kilns' control strategies for organics controlled would be fundamentally altered.

[16] The EPA did not believe this possible under the 2010 PM standard, and costed polishing filters in all instances. See EPA–HQ–OAR–2002–0051–3438.

The calculated design value, which reflects the average PM emissions from the sources used to establish the floor in this proposed rule, would be 0.02655 lb/ton clinker vs. a calculated design value of 0.02296 lb/ton clinker under the final rule. See Portland Cement Reconsideration TSD section 9. These calculations are not so precise as to reliably predict to the third decimal point to the right of zero, so this difference should be viewed as suggesting a directional difference in the standards. Viewed as a type of bounding, directional difference, the difference in design values would be approximately 1.7 percent.

TABLE 4—COMPARISON OF NATIONWIDE PM EMISSIONS FROM 2010 RULE TO THIS PROPOSED RULE

[TSD, section 9]

	2010 rule	Proposed rule	Increment
Emissions limit (lb/ton clinker	0.04 30-day average	0.07 average of three one-hour stack tests.	NA
MACT average emissions for compliance (lb/ton clinker.	0.02296	0.02655	0.00359
2010 baseline emissions (tons/yr)	10,326	10,326	NA
Nationwide emissions reduction (tons/yr)	9,489	9,354	−135

Under the proposed revisions, full compliance would occur in September, 2015, along with the costs and benefits associated with full compliance. However, because facilities will begin installing or retrofitting controls prior to the full compliance date, the full benefits and costs would be phased-in over 2 years with the full benefits and costs realized by 2015.

O. Eligibility To Be a New Source

The EPA is not proposing a new date for new source eligibility. Thus, a source which commenced construction, modification, or reconstruction after May 6, 2009, would remain subject to the new source standard. Section 112(a)(4) of the Act defines a new source as a stationary source ''the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emissions standard applicable to such source.'' The EPA views the new source compliance date trigger (the date the EPA ''first proposes regulations * * *.'') to be the date the rulemaking record under which a standard is developed is proposed. See 74 FR 21158 (May 6, 2009). (This interpretation was not challenged in the underlying rulemaking and the EPA is not reopening it here, but rather is applying it.) Here the key record information is what new sources would need to do to comply and whether there is any change. It is the EPA's initial technical judgment that new sources would have to adopt the same control strategy—use of the same size fabric filter with membrane bags—under an amended standard of 0.02 lb/ton clinker (stack test) as they would under the promulgated standard of 0.01 lb/ton clinker (30-day average). A standard of 0.02 lb/ton clinker (stack test) remains very stringent and cannot be met (in the EPA's view) without using appropriately optimized baghouses and membrane bags. If this is correct (and the EPA solicits comment on the issue), then new sources would not need additional time and would follow through on their present control strategies. We also have performed the same type of analysis regarding the design value to which new sources would need to design under this proposal, reflecting the average performance of the best performing similar source. We believe that there would be no change, corroborating our engineering judgment that new sources will adopt the same control strategy under the proposed standard as under the promulgated standard. See Portland Cement Reconsideration TSD section 9. Consequently, the EPA is not proposing to alter the new source eligibility date of May 6, 2009.

IV. Other Proposed Testing and Monitoring Revisions

Following the September 2010 promulgation of the final rule, we found the following errors and omissions in the testing and monitoring provisions and are proposing to correct them.

- Equations for calculating rolling operating day emissions rates.
- Definition or procedures that include extraneous wording.
- Incorrect units in equations.
- Cross references and typographical errors in the rule.

We are proposing revisions that will clarify that data collected as part of relative accuracy test audits and performance tests are to be submitted to the EPA using their Electronic Reporting Tool. For sources that are required to monitor HCl emissions with a CEMS, we are revising the requirements for using HCl CEMS to define the span value for this source category, to include quality assurance measures for data collected under ''mill off'' conditions, and to clarify use of PS 15.

In the September 9, 2010, final rule we noted that raw material dryers have high O_2 contents due to their inherent operation characteristics (and not due to the addition of dilution air). Referencing the raw material dryer standard to 7 percent O_2 would actually result in a more stringent standard than for cement kilns. For example, given the typical O_2 contents of kiln exhaust (7 to 12 percent), a kiln just meeting the THC limit of 24 ppmvd would have an actual stack measurement of approximately 16 to 24 ppmvd. If the raw material dryer standard is referenced to the same O_2 level, they would have to meet a measured THC limit of approximately 3 ppmvd. For this reason, we referenced the O_2 level of the standard for raw materials dryers to 19 percent O_2, which is the typical O_2 level found in the exhaust of these devices. However industry commented that, due to these high O_2 contents, the inherit measurement errors present in O_2 monitors causes high variability in the correction factor, even with a 19 percent reference value, and in some cases results in a negative factor. Given these errors and the fact that raw materials dryers operate at such high O_2 concentrations during normal operation we are removing the O_2 correction factors for raw material dryers.

The EPA is also proposing minor, non-substantive changes to the provisions listed below. These changes are largely for ease of readability or clarity, and do not reopen, reassess or otherwise reconsider these provisions' substance. The minor editorial and clarifying changes were made in the following sections and paragraphs:

- Section 60.62(d).
- Section 60.63(b)(1)(i) and (ii), (b)(2), (f)(1), (2), (4), (5), (h)(1) and (6) through (9), (i).

- Section 60.64(b)(2).
- Section 60.66.
- Section 63.1340(b)(6) through (8).
- Section 63.1346(a) and (c) through (e).
- Section 63.1348(a)(2), (3)(i) through (iii), (a)(4)(i)(A), (a)(4)(ii) and (iv).
- Section 63.1348(b)(1)(i), (iii) and (iv).
- Section 63.1348(b)(3), (5), (6)(i), (8) and (c)(2)(iv).
- Section 63.1349(a), (b)(3), (d)(1) and (d)(2) and (e).
- Section 63.1350(d)(1)(i) and (ii), (f), (f)(2)(i) and (iii), (f)(3), (f)(4), (g)(1) and (2), (k), (m)(10) and (11), (o) and (p).
- Section 63.1352(b).
- Section 63.1356.

V. Other Changes and Areas Where We Are Requesting Comment

We are also proposing amendments to clarify various requirements in this proposed rule including issues of applicability, treatment of multiple sources that vent to a single stack, third party certification, definitions, startup/shutdown reporting requirements, malfunctions and use of bag leak detection systems when PM CPMS are in use. We are also proposing to revise the definition of raw material dryer to clarify that they may be used for removing the moisture from materials other than kiln feed.

The EPA is proposing to amend 63.1354(c) for reporting startup, shutdown and malfunctions when sources fail to meet a standard. We are proposing language that requires sources that deviate from a standard during startup, shutdown or malfunction to report the information concerning such events in semi-annual compliance reports. We are proposing that the report must contain the number, duration and cause of such events (including unknown cause, if applicable), list the affected source or equipment, the date and time that each event started and stopped, an estimate of the volume of each regulated pollutant emitted over the emission limit for which the source failed to meet a standard, and a description of the method used to estimate the emissions.

We note that while malfunction events may also be reported under provisions related to assertion of an affirmative defense, this separate malfunction reporting requirement is not redundant of the affirmative defense reporting requirement because reporting of malfunctions under the affirmative defense is not mandatory and would occur only if a source chooses to take advantage of the affirmative defense.

Changes to recordkeeping requirements. The EPA is also proposing to amend section 63.1355(f) for recordkeeping for events of startup and shutdown. Currently (f) requires a record of the occurrence and duration of each startup or shutdown. The EPA is proposing to refine this requirement based on the requirements applicable during periods of startup and shutdown. Given that some affected sources under subpart LLL are subject to a different standard during startup and shutdown, it will be important to know when such startup and shutdown periods begin and end in order to determine compliance with the appropriate standard. Thus, the EPA is proposing to require that affected sources subject to emission standards during startup or shutdown that differs from the emission standard that applies at all other times (i.e., mercury and PM) must record the occurrence and duration of such periods. The EPA is also proposing to add a requirement that sources record an estimate of the volume of emissions over the standard if the affected source fails to meet a standard during either startup or shutdown, and record the estimating technique.

The EPA is also proposing to amend (g)(1) to obtain similar information on malfunction events. Currently this paragraph requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control and monitoring equipment. The EPA is proposing that this requirement apply only to malfunctions that cause a failure to meet an applicable standard and is requiring that the source record date and time of the malfunction rather than ''occurrence.'' The EPA is also proposing to add to (g) the requirement that sources keep records that include a list of the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet a standard, and a description of the method used to estimate the emissions. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to determine compliance during malfunction events, to allow the EPA to determine the severity of the failure to meet the standard, and to provide data that may document how the source met the general duty to minimize emissions during recorded malfunction events.

VI. Summary of Cost, Environmental, Energy and Economic Impacts of Proposed Amendments

A. What are the affected sources?

As noted in the promulgated rule, the EPA estimates that by 2013 there will be 100 Portland cement manufacturing facilities located in the U.S. and Puerto Rico that are expected to be affected by that rule, and, that approximately 5 of those facilities are complete new greenfield facilities. All these facilities will operate 158 cement kilns and associated clinker coolers. Of these kilns, 24 are CISWI kilns and have been removed from our data set used to establish existing source floors. Based on capacity expansion data provided by the PCA, by 2013 there will be 16 kilns and their associated clinker coolers subject to NESHAP new source emission limits for mercury, HCl and THC, and seven kilns and clinker coolers subject to the amended NSPS for NO_X and SO_2. Some of these new kilns will be built at existing facilities and some at new greenfield facilities.

B. How are the impacts for this proposal evaluated?

For these proposed amendments, we determined whether additional control measures, work practices and monitoring requirements would be required by cement manufacturing facilities to comply with the proposed amendments. For any additional control measure, work practice or monitoring requirement we determined the associated capital and annualized cost that would be incurred by facilities required to implement the measures. Finally, we considered the extent to which any facility in the industry would find it necessary to implement the additional measures in order to comply with the proposed amendments. Using this approach, we assessed potential impacts from the proposed revisions.

These proposed amendments affect the 2010 rule and are expected to result in lower costs for the Portland cement industry. We are evaluating the impacts of these proposed amendments relative to the impacts estimated for the 2010 final rule. As explained in section N above, the proposed amendment to the PM standard affords alternative compliance opportunities for existing sources which are less costly. These could be utilizing existing PM control devices rather than replacing them (for example, retaining an ESP or a smaller baghouse), or supplementing existing PM control rather than replacing it (putting polishing controls ahead of the primary PM control device). Compliance strategies for the other

HAP, all of which involve some element of PM control, also may be affected. Cost savings from these alternatives could be significant. For example, we have performed a case study from the data set used in the 2010 impacts analysis. Under this proposed rule, an estimated 21 ESP-equipped kilns no longer need to install membrane bags on a downstream polishing Fabric Filter (FF), and one FF retain their standard fabric bags rather than replacing them with membrane bags. The difference in annual cost for PM control under the proposal scenario and the more stringent 2010 scenario is $4.2 million per year. That is, under this proposed rule, the annual cost of compliance will be $4.2 million less than under the 2010 rule under this scenario (see Portland Cement Reconsideration TSD, section 9). The EPA is not presently able to further quantify potential costs of the proposed changes to the emission standards. This is because the agency lacks the site-specific information necessary to make the engineering determinations as to how individual sources may choose to comply. There are also certain costs, and cost savings, associated with other aspects of the proposal. There may be a minor difference in costs of stack testing for PM and use of a CPMS, rather than use of a PM CEMS. However, since the PM CEMS would be calibrated based on stack testing, and the CPMS is the same type of device as a PM CEMS, the EPA does not believe there is any significant cost difference between these provisions.

The proposed revisions to the alternative organic HAP standard (from 9 ppm to 12 ppm, reflecting the analytic method practical quantitation limit) would not require additional controls or monitoring. The EPA accordingly does not estimate that there would be any cost (or emission reduction benefit) associated with this proposal.

The proposed revisions for open clinker storage piles codify current fugitive dust control measures already required by most states, thus no impacts are expected. These proposed standards would be significantly less expensive than the controls for open piles in the 2010 final rule, which required enclosures.

Although we are reproposing the affirmative defense provisions, impacts were not accounted for in the 2010 rulemaking. Thus, we have estimated the additional industry burden associated with the affirmative defense provisions. We estimate the additional cost is $3,142 per year for the entire industry. See Supporting Statement in the docket. One of the proposed revisions would allow sources that control acid gases, including HCl, with dry caustic scrubbers to use periodic performance testing and parameter monitoring rather than with HCl CEMS. This will provide those sources with additional flexibility in complying with the HCl standards. The proposed revision to the alternative PM emissions limit provisions merely recognizes that sources other than the clinker cooler may combine their exhaust with the kiln exhaust gas and corrects the equation for calculating the alternative limit. Therefore, there should be no impacts from this proposed revision. The proposal to use recordkeeping as the monitoring mechanism for the startup and shutdown standards should also result in cost savings because facilities in the industry already keep records on feed and fuel usage and they will not have to install and operate CEMS for these periods. CEMS for monitoring all HAP or HAP surrogates could cost each facility $569,000 in capital cost and annualized costs of $198,000. See EPA–HQ–OAR–2002–0051–3438.

The proposed revisions for new testing and monitoring of coal mills that use kiln exhaust gases to dry coal and exhaust through a separate stack are not expected to have significant impacts. The proposed revision would make existing kilns that undergo a modification, as defined by NSPS, subject to the NESHAP PM standard for existing source rather than the PM limit for new sources. This proposed revision is correcting an inadvertent conflict between the two rules and will not result in any impacts.

C. What are the air quality impacts?

In these proposed amendments, emission limits for mercury, THC and HCl are unchanged from the 2010 rule. Thus, we expect no change in emissions from the 2010 rule for these HAP and HAP surrogates. The alternative HAP organic standard would be amended to 12 ppm, but as this reflects the practical quantitative limit of detection, it is not clear if additional emissions are associated with the proposed standard since a lower standard would not be measured reliably.

For PM, the limit for existing sources would change from 0.04 lb/ton clinker to 0.07 lb/ton clinker. The PM limit for new sources also would be changed to 0.02 lb/ton clinker from 0.01 lb/ton clinker. The standard would be measured on a 3-run basis rather than on a 30-day basis with a CEMS. The proposed changes in the PM standards, while not considered significant in absolute terms, may result in a small increase in total nationwide emissions by allowing slightly more variability, although we estimate that design values will be essentially identical under the 2010 and proposed standard. See section III.N above. As explained in the impacts analysis for the 2010 rule (see Docket item EPA–HQ–OAR–2002–0051–3438), emission reductions were estimated by comparing baseline emissions to the long-term average emissions of the MACT floor kilns. The average emissions, rather than the emissions limit, must be used because to comply with the limit all or most of the time, emissions need to be reduced to the average of the MACT floor kilns. Under the 2010 rule, the average PM emissions from the existing floor kilns were 0.02296 lb/ton clinker. Under the reconsideration, the average PM emissions of the existing floor kilns is calculated to be 0.02655 lb/ton clinker although, as noted, this difference is less than the normal analytic variability in PM measurement methods and so must be viewed as directional rather than precisely quantitative. The average emissions for new kilns did not change and we believe new sources will have to adopt identical control strategies as under the promulgated standards. We, therefore, are not estimating an emission increase from new kilns. For existing kilns, with an increase in PM emissions under the proposed rule of 0.00359 lb/ton clinker compared to the 2010 rule, nationwide emissions of PM would increase by 135 tons per year (0.00359 $\times$ 75,355,116/2000). Thus, the EPA estimates that the main effect of this proposed rule for PM will be to provide flexibility for those days when emissions increase as a result of normal operating variability, but would not significantly alter long-term average performance for PM.

Emission reductions under the 2010 rule and the proposed rule, in 2015, are compared in Table 5.

TABLE 5—COMPARISON OF NATIONWIDE PM EMISSIONS FROM 2010 RULE TO PROPOSED RULE IN 2015

	Kiln type	2010 rule	Proposed rule	Increment
Emissions limit (lb/ton clinker)	Existing	0.04 (30-day average with a CEMS).	0.07 (3-run stack test)	NA
MACT average emissions for compliance (lb/ton clinker).	Existing	0.02296	0.02655	0.00359
2010 baseline emissions (tons/yr).		10,326	10,326	NA
Nationwide emissions reduction (tons/yr).	Total	9,489	9,354	−135

The EPA did not have sufficient information to quantify the overall change in emissions for 2013 to 2015 that might arise due to the proposed change in compliance dates. The EPA encourages comment on all aspects of our analysis.

D. What are the water quality impacts?

None of the amendments being proposed will have significant impacts on water quality. To the extent that the proposed revision affecting dry caustic scrubbers encourages their use, some reduction in water consumption may occur although we have no information upon which to base an estimate.

E. What are the solid waste impacts?

None of the amendments being proposed today are expected to have any solid waste impacts.

F. What are the secondary impacts?

Indirect or secondary air quality impacts include impacts that will result from the increased electricity usage associated with the operation of control devices as well as water quality and solid waste impacts (which were just discussed) that will occur as a result of these proposed revisions. Because we are proposing revisions that reduce the stringency of the existing source emission limits PM from the promulgated 2010 limits, we believe that some facilities may be able to alter their strategy for complying with the standards for the four pollutants to achieve compliance at a lower cost than possible under the original standard. These types of determinations will be made for each facility based on site-specific characteristics such as process type, equipment age, existing air pollution controls, raw material and fuel characteristics, economic factors and others. Therefore, we are not able to reliably predict secondary impacts for individual facilities or for the industry as a whole.

G. What are the energy impacts?

As discussed in the preceding section, because of the proposed revisions to the PM emission limits, some facilities may be able to develop more cost effective compliance strategies. However, we cannot accurately predict the extent to which these site-specific compliance strategies may increase or decrease energy demands.

H. What are the cost impacts?

Under the cost scenario discussed above, we estimate that there could be savings of $12.2 million associated with alternative compliance strategies for meeting amended PM standards and making corresponding adjustments in compliance strategies for the other HAP. Table 6 summarizes the costs and emissions reductions of this proposed action.

TABLE 6—COSTS AND EMISSIONS REDUCTIONS OF PROPOSED AMENDMENTS RELATIVE TO THE 2010 RULE [a b c d e]

Proposed amendment	Capital cost	Annualized cost	Emissions reduction
Revised PM standard	−$18,640,106	−$4,200,000	−135 tons/yr (emissions increase)
Replace PM CEMS with PM CPMS	0	−7,980,000	0
Total	−18,640,106	−12,180,000	

[a] See section III below for further discussion of impacts of the proposed amendments.
[b] Negative numbers indicate cost savings or emissions increase. All costs are in 2005 dollars.
[c] We also estimate that there will be a one-time cost of $25,000 for each facility to develop the calculation that will allow them to demonstrate compliance during periods of startup and shutdown.
[d] Emissions reductions are the total relative to the 2010 rule once full compliance is achieved in 2015.
[e] Full compliance costs will not occur until September 9, 2015.

The cost information in Table 6 is in 2005 dollars at a discount rate of 7 percent. The EPA did not have sufficient information to quantify the overall change in benefits or impacts in emissions for 2013 to 2015.

Though we are not proposing the coal mill monitoring requirements in this action, if we required it, sources with integral coal mills that exhaust through a separate exhaust could potentially incur a capital cost of $36,000 to install a continuous flow meter. The annualized cost of a flow meter is $11,000. We do not have information on the number of such coal mills in the industry that would allow us to calculate nationwide costs. We also estimate that there will be a one-time cost of $25,000 for each facility to develop the calculation that will allow them to demonstrate compliance during periods of startup and shutdown. With the proposed change to PM CPMS instead of CEMS, it is estimated that the elimination of the PS correlation tests will result in a savings of $60,000 per kiln.

I. What are the health effects of these pollutants?

In this section, we provide a qualitative description of benefits associated with reducing exposure to $PM_{2.5}$, HCl and mercury. Controls installed to reduce HAP would also

reduce ambient concentrations of $PM_{2.5}$ as a co-benefit. Reducing exposure to $PM_{2.5}$ is associated with significant human health benefits, including avoiding mortality and morbidity from cardiovascular and respiratory illnesses. Researchers have associated $PM_{2.5}$ exposure with adverse health effects in numerous toxicological, clinical and epidemiological studies (U.S. EPA, 2009).[17] When adequate data and resources are available and an RIA is required, the EPA generally quantifies several health effects associated with exposure to $PM_{2.5}$ (e.g., U.S. EPA, 2011).[18] These health effects include premature mortality for adults and infants, cardiovascular morbidities such as heart attacks, hospital admissions, and respiratory morbidities such as asthma attacks, acute and chronic bronchitis, hospital and emergency department visits, work loss days, restricted activity days, and respiratory symptoms. Although the EPA has not quantified certain outcomes including adverse effects on birth weight, pre-term births, pulmonary function and other cardiovascular and respiratory effects, the scientific literature suggests that exposure to $PM_{2.5}$ is also associated with these impacts (U.S. EPA, 2009). $PM_{2.5}$ also increases light extinction, which is an important aspect of visibility (U.S. EPA, 2009).

Hydrogen chloride (HCl) is a corrosive gas that can cause irritation of the mucous membranes of the nose, throat and respiratory tract. Brief exposure to 35 ppm causes throat irritation, and levels of 50 to 100 ppm are barely tolerable for 1 hour.[19] The greatest impact is on the upper respiratory tract; exposure to high concentrations can rapidly lead to swelling and spasm of the throat and suffocation. Most seriously exposed persons have immediate onset of rapid breathing, blue coloring of the skin and narrowing of the bronchioles. Exposure to HCl can lead to RADS, a chemically- or irritant-induced type of asthma. Children may be more vulnerable to corrosive agents than adults because of the relatively smaller diameter of their airways. Children may also be more vulnerable to gas exposure because of increased minute ventilation per kilograms and failure to evacuate an area promptly when exposed. Hydrogen chloride has not been classified for carcinogenic effects.[20]

Mercury in the environment is transformed into a more toxic form, methylmercury (MeHg). Because mercury is a persistent pollutant, MeHg accumulates in the food chain, especially the tissue of fish. When people consume these fish, they consume MeHg. In 2000, the NAS Study was issued which provides a thorough review of the effects of MeHg on human health (NRC, 2000).[21] Many of the peer-reviewed articles cited in this section are publications originally cited in the MeHg Study. In addition, the EPA has conducted literature searches to obtain other related and more recent publications to complement the material summarized by the NRC in 2000.

In its review of the literature, the National Academy of Science (NAS) found neurodevelopmental effects to be the most sensitive and best documented endpoints and appropriate for establishing an oral reference dose (RfD) (National Research Council (NRC), 2000); in particular NAS supported the use of results from neurobehavioral or neuropsychological tests. The NAS report noted that studies in animals reported sensory effects as well as effects on brain development and memory functions and support the conclusions based on epidemiology studies. The NAS noted that their recommended endpoints for an RfD are associated with the ability of children to learn and to succeed in school. They concluded the following: ''The population at highest risk is the children of women who consumed large amounts of fish and seafood during pregnancy. The committee concludes that the risk to that population is likely to be sufficient to result in an increase in the number of children who have to struggle to keep up in school.''

The NAS summarized data on cardiovascular effects available up to 2000. Based on these and other studies, the NRC concluded that ''Although the data base is not as extensive for cardiovascular effects as it is for other end points (i.e. neurologic effects) the cardiovascular system appears to be a target for MeHg toxicity in humans and animals.'' The NRC also stated that ''additional studies are needed to better characterize the effect of methylmercury exposure on blood pressure and cardiovascular function at various stages of life.''

Additional cardiovascular studies have been published since 2000. The EPA did not to develop a quantitative dose-response assessment for cardiovascular effects associated with MeHg exposures, as there is no consensus among scientists on the dose-response functions for these effects. In addition, there is inconsistency among available studies as to the association between MeHg exposure and various cardiovascular system effects. The pharmacokinetics of some of the exposure measures (such as toenail mercury levels) are not well understood. The studies have not yet received the review and scrutiny of the more well-established neurotoxicity data base.

The Mercury Study[22] noted that MeHg is not a potent mutagen but is capable of causing chromosomal damage in a number of experimental systems. The NAS concluded that evidence that human exposure to MeHg caused genetic damage is inconclusive; they note that some earlier studies showing chromosomal damage in lymphocytes may not have controlled sufficiently for potential confounders. One study of adults living in the Tapajós River region in Brazil (Amorim et al., 2000) reported a direct relationship between MeHg concentration in hair and DNA damage in lymphocytes; as well as effects on chromosomes.[23] Long-term MeHg exposures in this population were believed to occur through consumption of fish, suggesting that genotoxic effects (largely chromosomal aberrations) may result from dietary, chronic MeHg exposures similar to and above those seen in the Faroes and Seychelles populations.

Although exposure to some forms of mercury can result in a decrease in

[17] U.S. Environmental Protection Agency (U.S. EPA). 2009. *Integrated Science Assessment for Particulate Matter* (Final Report). EPA–600–R–08–139F. National Center for Environmental Assessment–RTP Division. Available on the Internet at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546.*

[18] U.S. Environmental Protection Agency (U.S. EPA). 2011. Regulatory Impact Analysis for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States. Office of Air and Radiation, Research Triangle Park, NC. Available on the Internet at *http://www.epa.gov/airtransport/pdfs/FinalRIA.pdf.*

[19] Agency for Toxic Substances and Disease Registry (ATSDR). Medical Management Guidelines for Hydrogen Chloride. Atlanta, GA: U.S. Department of Health and Human Services. Available online at *http://www.atsdr.cdc.gov/mmg/mmg.asp?id=758&tid=147#bookmark02.*

[20] U.S. Environmental Protection Agency (U.S. EPA). 1995. Integrated Risk Information System File of Hydrogen Chloride. Research and Development, National Center for Environmental Assessment, Washington, DC. This material is available electronically at *http://www.epa.gov/iris/subst/0396.htm.*

[21] National Research Council (NRC). 2000. *Toxicological Effects of Methylmercury.* Washington, DC: National Academies Press.

[22] U.S. Environmental Protection Agency (U.S. EPA). 1997. *Mercury Study Report to Congress,* EPA–HQ–OAR–2009–0234–3054. December. Available on the Internet at *http://www.epa.gov/hg/report.htm.*

[23] Amorim, M.I.M., D. Mergler, M.O. Bahia, H. Dubeau, D. Miranda, J. Lebel, R.R. Burbano, and M. Lucotte. 2000. Cytogenetic damage related to low levels of methyl mercury contamination in the Brazilian Amazon. An. Acad. Bras. Science. 72(4): 497–507.

immune activity or an autoimmune response (ATSDR, 1999), evidence for immunotoxic effects of MeHg is limited (NRC, 2000).[24]

Based on limited human and animal data, MeHg is classified as a ''possible'' human carcinogen by the International Agency for Research on Cancer (IARC, 1994) and in IRIS (U.S. EPA, 2002).[25] [26] The existing evidence supporting the possibility of carcinogenic effects in humans from low-dose chronic exposures is tenuous. Multiple human epidemiological studies have found no significant association between mercury exposure and overall cancer incidence, although a few studies have shown an association between mercury exposure and specific types of cancer incidence (e.g., acute leukemia and liver cancer) (NRC, 2000).

There is also some evidence of reproductive and renal toxicity in humans from MeHg exposure. However, overall, human data regarding reproductive, renal, and hematological toxicity from MeHg are very limited and are based on either studies of the two high-dose poisoning episodes in Iraq and Japan or animal data, rather than epidemiological studies of chronic exposures at the levels of interest in this analysis.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, the EPA submitted this action to the OMB for review under Executive Orders 12866 and 13563 (76 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action. A RIA was prepared for the September 2010 final rule and can be found at: *http://www.epa.gov/ttn/ecas/regdata/RIAs/portlandcementfinalria.pdf.* The benefits, cost and economic analysis for the first year of full compliance for the 2010 final rule are expected to be little changed for the first year of full compliance for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 1801.10 for the NESHAP and 1051.12 for the NSPS. The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

We are proposing new paperwork requirements for the Portland Cement Manufacturing source category in the form of a requirement to incorporate fugitive dust control measures for clinker piles into their existing operations and maintenance plan. We are also proposing to use recordkeeping as the means of monitoring compliance with the startup and shutdown standards.

For this proposed rule, the EPA is also proposing to add an affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $3,142 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small.

With respect to the Portland Cement Manufacturing source category, the emissions controls are operational before the associated emission source(s) commence operation and remain operational until after the associated emission source(s) cease operation. Also, production operations would not proceed or continue if there is a malfunction of a control device and the time required to shut down production operations (i.e., on the order of a few hours or a day) is small compared to the averaging time of the emission standards (i.e., monthly averages). Thus, we believe it is unlikely that a control device malfunction would cause an exceedance of any emission limit. Therefore, sources within this source category are not expected to have any need or use for the affirmative defense and we believe that there is no burden to the industry for the affirmative defense provisions in this proposed rule.

We expect to gather information on such events in the future and will revise this estimate as better information becomes available. We estimate 86 regulated entities are currently subject

[24] Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological Profile for Mercury. U.S. Department of Health and Human Services, Public Health Service, Atlanta, GA.

[25] U.S. Environmental Protection Agency (EPA). 2002. Integrated Risk Information System (IRIS) on Methylmercury. National Center for Environmental Assessment. Office of Research and Development. Available online at *http://www.epa.gov/iris/subst/0073.htm.*

[26] International Agency for Research on Cancer (IARC). 1994. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans and their Supplements: Beryllium, Cadmium, Mercury, and Exposures in the Glass Manufacturing Industry. Vol. 58. Jalili, H.A., and A.H. Abbasi. 1961. Poisoning by ethyl mercury toluene sulphonanilide. Br. J. Indust. Med. 18(Oct.):303–308 (as cited in NRC 2000).

to subpart LLL and will be subject to all proposed standards. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart LLL is estimated to be $352,814 per year. This includes 496 labor hours per year at a total labor cost of $47,806 per year, and total non-labor capital and operation and maintenance costs of $305,008 per year. This estimate includes reporting and recordkeeping associated with the proposed requirements for startup and shutdown and outdoor clinker piles. The total burden for the federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 263 hours per year at a total labor cost of $11,885 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2011–0817. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 18, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by August 17, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, small entity is defined as: (1) A small business whose parent company has no more than 750 employees depending on the size definition for the affected NAICS code, as defined by the Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We estimate that 3 of the 26 existing Portland cement entities are small entities. After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the three affected small entities, all are expected to incur an annual compliance cost of less than 1.0 percent of sales to comply with this proposed rule (reflecting potential controls on piles, which are likely to have lower cost when compared to the 2010 rule requirements because these plants already have requirements for control of piles in their Title V permits).

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. For example, we are proposing to expand the provision that allows periodic HCl performance tests as an alternative to CEMS for sources equipped with wet scrubbers to also apply to those sources that use dry sorbent injection. This proposed rule would add an option for sources using wet or dry scrubbers for HCl control that also use a CEMS for SO_2. These sources would now have the option of using their SO_2 CEMS in conjunction with a periodic stack test to demonstrate compliance with the HCl standard. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duties on any state, local or tribal governments or the private sector. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Under the provisions of this proposed rule, there may be an increase in mercury emissions and metal HAP emissions although any increase will be minimal because the same control technology that is necessary under the current NESHAP will be needed to meet the proposed emissions limits. The more stringent limitations of fugitive dust emissions from open clinker piles may result in decreased risk to Indian tribal populations. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed amendments do not require the use of additional controls as compared to the 2010 rule and may allow the industry to reduce its cost of compliance by increasing the industry's flexibility to institute different and less costly control strategies than under the 2010 rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

An analysis of demographic data was prepared for the 2010 final rule and can be found in the docket for that rulemaking (EPA-docket no. EPA–HQ–OAR–2002–0051–3415). The impacts of the 2010 rule, which assumed full compliance, are expected to be unchanged as a result of this action. Therefore, beginning from the date of full compliance, the EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The full benefits of this proposed rule will not result until 2015 due to the proposed amended compliance date. The EPA has determined that the proposed amended compliance date will not result in disproportionately high and adverse human health or environmental effects on minority or low-income populations because the demographic analysis showed that the average of populations in close proximity to the sources, and thus most likely to be affected by the sources, were similar in demographic composition to national averages.

List of Subjects in 40 CFR Parts 60 and 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: June 22, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

2. Section 60.17 is amended by revising paragraph (h)(4) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus] (issued August 31, 1981), IBR approved for § 60.56c(b) of subpart Ec, § 60.63(f) of subpart F, § 60.106(e) of subpart J, § 60.104a(d), (h), (i) and, (j), § 60.105a(d), (f), and (g), § 60.106a(a), and § 60.107a(a), (c), (d), and (e) of subpart Ja, tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, § 60.4415(a) of subpart KKKK, § 60.2145(s) and, (t), § 60.2710(s) (t), and (w), § 60.2730(q), § 60.4900(b), § 60.5220(b), tables 1 and 2 to subpart LLLL, tables 2 and 3 to subpart MMMM, § 60.5406(c) and § 60.5413(b).

* * * * *

Subpart F—[Amended]

3. Section 60.61 is amended by adding paragraphs (e) and (f) to read as follows:

§ 60.61 Definitions.

* * * * *

(e) Excess emissions means, with respect to this subpart, results of any required measurements outside the applicable range (e.g., emissions limitations, parametric operating limits) that is permitted by this subpart. The values of measurements will be in the same units and averaging time as the values specified in this subpart for the limitations.

(f) Operating day means a 24-hour period beginning at 12:00 midnight during which the kiln operates at any time. For calculating rolling 30-day average emissions, an *operating day* does not include the hours of operation during startup or shutdown.

4. Section 60.62 is amended by:

a. Revising paragraphs (a)(1) and (a)(2);

b. Adding paragraph (a)(1)(iii)

c. Removing paragraph (b)(1)(i);

d. Redesignating paragraph (b)(1)(ii) as paragraph (b)(1)(i);

e. Revising paragraph (b)(1);

f. Removing paragraph (b)(2);

g. Redesignating paragraphs (b)(3) and (4) as (2) and (3);

h. Revising paragraph (d);

The revisions and deletion read as follows:

§ 60.62 Standards.

(a) * * *

(1) Contain particulate matter (PM) in excess of:

(i) [Reserved]

(ii) 0.02 pound per ton of clinker if construction or reconstruction of the kiln commenced after June 16, 2008.

(iii) Kilns that have undergone a modification may not discharge into the atmosphere any gases which contain PM in excess of 0.07 pound per ton of clinker.

(2) [Reserved]

* * * * *

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, you may not discharge into the atmosphere

from any clinker cooler any gases which:

(1) Contain PM in excess of:

(i) 0.02 pound per ton of clinker if construction or reconstruction of the clinker cooler commences after June 16, 2008.

(ii) Clinker coolers that have undergone a modification may not discharge into the atmosphere any gases which contain PM in excess of 0.07 pound per ton of clinker.

* * * * *

(d) If you have an affected source subject to this subpart with a different emissions limit or requirement for the same pollutant under another regulation in title 40 of this chapter, you must comply with the most stringent emissions limit or requirement and are not subject to the less stringent requirement.

5. Section 60.63 is amended by:

a. Revising paragraphs (b)(1)(i) and (b)(1)(ii);

b. Adding paragraph (b)(1)(iii);

c. Revising paragraphs (b)(2) and (b)(3);

d. Removing paragraph (b)(4);

e. Revising paragraphs (c) through (f);

f. Revising paragraph (g) introductory text;

g. Revising paragraph (g)(2);

h. Revising paragraph (h) introductory text;

i. Revising paragraphs (h)(1) and (h)(6);

j. Revising paragraph (h)(7) introductory text;

k. Revising paragraph (h)(8) introductory text;

l. Revising paragraph (h)(9);

m. Revising paragraph (i) introductory text; and

n. Revising paragraph (i)(1) and (i)(1)(i).

The revisions, addition, and deletions read as follows:

§ 60.63 Monitoring of operations.

* * * * *

(b) * * *

(1) * * *

(i) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates of the amount of clinker produced in tons of mass per hour. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy or

(ii) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates of the amount of feed to the kiln in tons of mass per hour. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln specific feed-to-clinker ratio based on reconciled clinker production rates determined for accounting purposes and recorded feed rates. This ratio should be updated monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(iii) For each kiln operating hour for which you do not have data on clinker production or the amount of feed to the kiln, use the value from the most recent previous hour for which valid data are available.

(2) Determine, record, and maintain a record of the accuracy of the system of measuring hourly clinker production rates or feed rates before initial use (for new sources) or by the effective compliance date of this rule (for existing sources). During each quarter of source operation, you must determine, record, and maintain a record of the ongoing accuracy of the system of measuring hourly clinker production rates or feed rates.

(3) If you measure clinker production directly, record the daily clinker production rates; if you measure the kiln feed rates and calculate clinker production, record the daily kiln feed and clinker production rates.

(c) *PM Emissions Monitoring Requirements.* (1) For each kiln or clinker cooler subject to a PM emissions limit in § 60.62, you must demonstrate compliance through an initial performance test and you must monitor continuous performance through use of a PM continuous parametric monitoring system (PM CPMS).

(2) For your PM CPMS, you will establish a site-specific operating limit corresponding to the highest 1-hour average PM CPMS output value recorded during the performance test demonstrating compliance with the PM limit. You will conduct your performance test using Method 5 at appendix A–3 to part 60 of this chapter. You will use the PM CPMS to demonstrate continuous compliance with your operating limit. You must repeat the performance test annually and reassess and adjust the site-specific operating limit in accordance with the results of the performance test.

(d) You must install, operate, calibrate, and maintain a CEMS continuously monitoring and recording the concentration by volume of NO_X emissions into the atmosphere for any kiln subject to the NO_X emissions limit in § 60.62(a)(3). If the kiln has an alkali bypass, NO_X emissions from the alkali bypass do not need to be monitored, and NO_X emission monitoring of the kiln exhaust may be done upstream of any commingled alkali bypass gases.

(e) You must install, operate, calibrate, and maintain a CEMS for continuously monitoring and recording the concentration by volume of SO_2 emissions into the atmosphere for any kiln subject to the SO_2 emissions limit in § 60.62(a)(4). If you are complying with the alternative 90 percent SO_2 emissions reduction emissions limit, you must also continuously monitor and record the concentration by volume of SO_2 present at the wet scrubber inlet.

(f) The NO_X and SO_2 CEMS required under paragraphs (d) and (e) of this section must be installed, operated and maintained according to Performance Specification 2 of appendix B of this part and the requirements in paragraphs (f)(1) through (5) of this section.

(1) The span value of each NO_X CEMS monitor must be set at 125 percent of the maximum estimated hourly potential NO_X emission concentration that translates to the applicable emissions limit at full clinker production capacity.

(2) You must conduct performance evaluations of each NO_X CEMS monitor according to the requirements in § 60.13(c) and Performance Specification 2 of appendix B to this part. You must use Methods 7, 7A, 7C, 7D, or 7E of appendix A–4 to this part for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to Method 7 or 7C of appendix A–4 to this part.

(3) The span value for the SO_2 CEMS monitor is the SO_2 emission concentration that corresponds to 125 percent of the applicable emissions limit at full clinker production capacity and the expected maximum fuel sulfur content.

(4) You must conduct performance evaluations of each SO_2 CEMS monitor according to the requirements in § 60.13(c) and Performance Specification 2 of appendix B to this part. You must use Methods 6, 6A, or 6C of appendix A–4 to this part for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to Method 6 or 6A of appendix A–4 to this part.

(5) You must comply with the quality assurance requirements in Procedure 1 of appendix F to this part for each NO_X and SO_2 CEMS, including quarterly accuracy determinations for monitors, and daily calibration drift tests.

(g) For each CPMS or CEMS required under paragraphs (c) through (e) of this section:

* * * * *

(2) You may not use data recorded during the monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. An owner or operator must use all the data collected during all other periods in reporting emissions or operating levels.

* * * * *

(h) You must install, operate, calibrate, and maintain instruments for continuously measuring and recording the stack gas flow rate to allow determination of the pollutant mass emissions rate to the atmosphere for each kiln subject to the PM emissions limits in § 60.62(a)(1) (ii) and (b)(1)(ii), the NO_X emissions limit in § 60.62(a)(3), or the SO_2 emissions limit in § 60.62(a)(4) according to the requirements in paragraphs (h)(1) through (10), where appropriate, of this section.

(1) The owner or operator must install each sensor of the flow rate monitoring system in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the NO_X and/or SO_2 CEMS, taking into account the manufacturer's recommendations. The flow rate sensor is that portion of the system that senses the volumetric flow rate and generates an output proportional to that flow rate.

* * * * *

(6) The flow rate monitoring system must be designed to measure a minimum of one cycle of operational flow for each successive 15-minute period.

(7) The flow rate sensor must be able to determine the daily zero and upscale calibration drift (CD) (see sections 3.1 and 8.3 of Performance Specification 2 in appendix B to this part for a discussion of CD).

* * * * *

(8) You must perform an initial relative accuracy test of the flow rate monitoring system according to section 8.2 of Performance Specification 6 of appendix B to this part, with the exceptions noted in paragraphs (h)(8)(i) and (ii) of this section.

* * * * *

(9) You must verify the accuracy of the flow rate monitoring system at least once per year by repeating the relative accuracy test specified in paragraph (h)(8) of this section.

* * * * *

(i) *Development and Submittal (Upon Request) of Monitoring Plans.* If you demonstrate compliance with any applicable emissions limit through performance stack testing or other emissions monitoring (including PM CPMS), you must develop a site-specific monitoring plan according to the requirements in paragraphs (i)(1) through (4) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under paragraph (h) of this section and § 63.8(f). If you use a bag leak detector system (BLDS), you must also meet the requirements specified in paragraph § 63.1350(m)(10) of this chapter.

(1) For each continuous monitoring system (CMS) required in this section, you must develop, and submit to the permitting authority for approval upon request, a site-specific monitoring plan that addresses paragraphs (i)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan, if requested, at least 30 days before the initial performance evaluation of your CMS.

(i) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

* * * * *

6. Section 60.64 is amended to read as follows:

§ 60.64 Test methods and procedures

(a) In conducting the performance tests and relative accuracy tests required in § 60.8, you must use reference methods and procedures and the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) You must demonstrate compliance with the PM standards in § 60.62 according to paragraphs (b)(1)(i) through (iv) of this section.

(1)(i) In using a PM CPMS to demonstrate compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (b)(1)(ii) through (iv) of this section.

(ii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (e.g., milliamps, stack concentration, or other raw data signal) from the PM CPMS for the periods corresponding to the test runs (e.g., three 1-hour average PM CPMS output values for three 1-hour test runs).

(iii) Determine your operating limit as the highest 1-hour average PM CPMS output value recorded during the performance test. You must verify an existing or establish a new operating limit after each repeated performance test.

(iv) To determine continuous compliance, you must record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. You must demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (e.g., milliamps, PM concentration, raw data signal) on a 30 operating day rolling average basis, updated at the end of each new kiln operating day. Use Equation 2 to determine the 30 kiln operating day average.

$$30\text{kiln operating day} = \frac{\sum_{i=1}^{n} Hpv_i}{n} \qquad \text{Eq. 2}$$

Where:

Hpvi = The hourly parameter value for hour i and

n = The number of valid hourly parameter values collected over 30 kiln operating days.

(2) Use Method 9 and the procedures in § 60.11 to determine opacity.

(3) Any sources other than kilns (including associated alkali bypass and clinker cooler) that are major sources as defined in § 63.2 of this chapter and that are subject to the 10 percent opacity limit must follow the appropriate monitoring procedures in § 63.1350(f), (m)(1)through(m)(4), (m)(10) through (11), (o), and (p) of this chapter.

(c) Calculate and record the rolling 30 kiln operating day average emission rate daily of NO_X and SO_2 according to the procedures in paragraphs (i) through (ii) of this section.

(i) Calculate the rolling 30 kiln operating day average emissions according to equation 3:

$$E = (C_s Q_s)/(P K) \qquad \text{Eq. 3}$$

Where:

E_{30D} = 30 kiln operating day average emission rate of NO_X or SO_2, lb/ton of clinker;
C_i = Concentration of NO_X or SO_2 for hour i, ppm;
Q_i = volumetric flow rate of effluent gas for hour i, where
C_i and Q_i are on the same basis (either wet or dry), scf/hr;
P_i = total kiln clinker produced during production hour i, ton/hr; and
k = conversion factor, 1.194×10^{-7} for NO_X and 1.660×10^{-7} for SO_2.
n = number of kiln operating hours over 30 kiln operating days, n = 1 to 720.

(ii) For each kiln operating hour for which you do not have at least one valid 15-minute CEMS data value, use the average emissions rate (lb/hr) from the most recent previous hour for which valid data are available.

(d)(1) Within 60 days after the date of completing each performance test(see § 60.8) as required by this subpart you must submit the results of the performance tests conducted to demonstrate compliance under this subpart to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX)(*www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority.

(2) Within 60 days after the date of completing each CEMS performance evaluation test (see § 60.13), you must submit the relative accuracy test audit data electronically into the EPA's Central Data Exchange by using the Electronic Reporting Tool as mentioned in paragraph (d)(1) of this section. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to the EPA's CDX.

(3) All reports required by this subpart not subject to the requirements in paragraphs (d)(1) and (2) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (e.g., by commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (d)(1) and (2) of this section in paper format.

7. Section 60.65 is revised to read as follows:

§ 60.65 Recordkeeping and reporting requirements.

(a) Each owner or operator required to install a CPMS or CEMS under sections § 60.63(c)–(e) shall submit reports of excess emissions. The content of these reports must comply with the requirements in § 60.7(c). Notwithstanding the provisions of § 60.7(c), such reports shall be submitted semiannually.

(b) Each owner or operator of facilities subject to the provisions of § 60.63(c)–(e) shall submit semiannual reports of the malfunction information required to be recorded by § 60.7(b). These reports shall include the frequency, duration, and cause of any incident resulting in deenergization of any device controlling kiln emissions or in the venting of emissions directly to the atmosphere.

(c) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Clean Air Act, 42 U.S.C. 7411, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this section, provided that they comply with the requirements established by the State.

8. Section 60.66 is amended by revising paragraph (b) introductory text to read as follows:

§ 60.66 Delegation of authority.

* * * * *

(b) In delegating implementation and enforcement authority to a State, local, or tribal agency, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S EPA and are not transferred to the State, local, or tribal agency.

* * * * *

PART 63—[AMENDED]

9. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

10. Section 63.14 is amended by revising paragraph (b)(54) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(54) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, approved 2003, IBR approved for § 63.1349(b) of subpart LLL, table 4 to subpart DDDD, and table 8 of subpart HHHHHHH of this part.

* * * * *

Subpart LLL—[Amended]

11. Section 63.1340 is amended by

a. Revising paragraphs (b)(6) through (b)(9); and

b. Revising paragraph (c).

The revisions read as follows:

§ 63.1340 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(6) Each raw material, clinker, or finished product storage bin at any portland cement plant that is a major source;

(7) Each conveying system transfer point including those associated with coal preparation used to convey coal from the mill to the kiln at any portland cement plant that is a major source;

(8) Each bagging and bulk loading and unloading system at any portland cement plant that is a major source; and

(9) Each open clinker storage pile at any portland cement plant.

(c) Onsite sources that are subject to standards for nonmetallic mineral processing plants in subpart OOO, part 60 of this chapter are not subject to this subpart. Crushers are not covered by this subpart regardless of their location.

* * * * *

12. Section 63.1341 is amended by:

a. Deleting definitions of ''Enclosed storage pile,'' and ''Inactive clinker pile;''

b. Adding a definition for ''Deviation,'' ''In-line coal mill,'' ''Open clinker storage pile,'' and ''Startup and shutdown;'' in alphabetical order and

c. Revising definitions for ''Kiln,'' ''New source,'' ''Operating day,'' ''Raw material dryer,'' and ''Total organic HAP,'' in alphabetical order.

The deletions, additions and revisions read as follows:

§ 63.1341 Definitions.

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source: (i) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, work practice standard, or monitoring requirement; or (ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit. A deviation is not always a violation.

* * * * *

In-line coal mill means those coal mills using kiln exhaust gases in their process. Coal mills with a heat source other than the kiln or coal mills using exhaust gases from the clinker cooler are not an in-line coal mill.

* * * * *

Kiln means a device, including any associated preheater or precalciner devices, inline raw mills, inline coal mills or alkali bypasses that produces clinker by heating limestone and other materials for subsequent production of portland cement. Because the inline raw mill and inline coal mill are considered an integral part of the kiln, for purposes of determining the appropriate emissions limit, the term kiln also applies to the exhaust of the inline raw mill and the inline coal mill.

* * * * *

New source means any source that commenced construction after May 6, 2009, for purposes of determining the applicability of the kiln, clinker cooler and raw material dryer emissions limits for mercury, PM, THC, and HCl.

* * * * *

Open clinker storage pile means any clinker storage pile that is not completely enclosed in a building or structure.

Operating day means any 24-hour period beginning at 12:00 midnight during which the kiln operates for any time. For calculating the rolling 30-day average emissions, kiln *operating days* do not include the hours of operation during startup or shutdown.

* * * * *

Raw material dryer means an impact dryer, drum dryer, paddle-equipped rapid dryer, air separator, or other equipment used to reduce the moisture content of feed or other materials.

* * * * *

Startup and shutdown means the periods of kiln operation that do not include normal operations. Startup begins when the kiln's induced fan is turned on and continues until continuous feed is introduced into the kiln. Shutdown begins when feed to the kiln is halted.

* * * * *

Total organic HAP means, for the purposes of this subpart, the sum of the concentrations of compounds of formaldehyde, benzene, toluene, styrene, m-xylene, p-xylene, o-xylene, acetaldehyde, and naphthalene as measured by EPA Test Method 320 or Method 18 of appendix A to this part or ASTM D6348–03 or a combination of these methods, as appropriate. When using ASTM D6348–03, the following conditions must be met: (1) The test plan preparation and implementation in the Annexes to ASTM D6348–03, Sections A1 through A8 are mandatory; (2) For ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (see Equation A5.5); (3) For the ASTM D6348–03 test data to be acceptable for a target analyte, %R must be 70% ≥ R ≤ 130%; and (4) The %R value for each compound must be reported in the test report and all field measurements corrected with the calculated %R value for that compound using the following equation:

$$Reported\ Result = \frac{(Measured\ Concentration\ in\ Stack)}{\%R} \times 100$$

If measurement results for any pollutant are reported as below the method detection level (e.g., laboratory analytical results for one or more sample components are below the method defined analytical detection level), you must use the method detection level as the measured emissions level for that pollutant in calculating the total organic HAP value. The measured result for a multiple component analysis (e.g., analytical values for multiple Method 18 fractions) may include a combination of method detection level data and analytical data reported above the method detection level. The owner or operator of an affected source may request the use of other test methods to make this determination under paragraphs 63.7(e)(2)(ii) and (f) of this part.

* * * * *

13. Section 63.1343 is revised to read as follows:

§ 63.1343 What standards apply to my kilns, clinker coolers, raw material dryers, and open clinker piles?

(a) *General.* The provisions in this section apply to each kiln and any alkali bypass associated with that kiln, clinker cooler, and raw material dryer. All D/F, HCl, and total hydrocarbon (THC) emissions limit are on a dry basis. The D/F, HCl, and THC limits for kilns are corrected to 7 percent oxygen. All THC emissions limits are measured as propane. Standards for mercury and THC are based on a rolling 30-day

average. If using a CEMS to determine compliance with the HCl standard, this standard is based on a rolling 30-day average. You must ensure appropriate corrections for moisture are made when measuring flow rates used to calculate mercury emissions. The 30-day period means 30 consecutive kiln operating days excluding periods of startup and shutdown. All emissions limits for kilns, clinker coolers, and raw material dryers currently in effect that are superseded by the limits below continue to apply until the compliance date of the limits below, or until the source certifies compliance with the limits below, whichever is earlier.

(b) *Kilns, clinker coolers, raw material dryers, raw mills, and finish mills.*

(1) The emissions limits for these sources are shown in Table 1 below. PM limits for existing kilns also apply to kilns that have undergone a modification as defined in subpart A of part 60 of title 40.

TABLE 1—EMISSIONS LIMITS FOR KILNS, CLINKER COOLERS, RAW MATERIAL DRYERS, RAW AND FINISH MILLS

If your source is a (an):	And the operating mode is:	And if is located at a:	Your emissions limits are:	And the units of the emissions limit are:	The oxygen correction factor percent is:
1. Existing kiln	Normal operation	Major or area source	PM [1] 0.07	lb/ton clinker	NA
			D/F [2] 0.2	ng/dscm	7
			Mercury 55	lb/MMtons clinker	NA
			THC [3 4] 24	ppmvd	7
2. Existing kiln	Normal operation	Major source	HCl 3	ppmvd	7
3. Existing kiln	Startup and shutdown	Major or area source	PM 0.04	gr/dscf	NA
			D/F 0.2	ng/dscm (TEQ)	NA
			Mercury 10	ug/dscm	NA
			THC 24	ppmvd	NA
4. Existing kiln	Startup and shutdown	Major source	HCl 3	ppmvd	NA
5. New kiln	Normal operation	Major or area source	PM 0.02	lb/ton clinker	NA
			D/F [1] 0.2	ng/dscm	7
			Mercury 21	lb/MM tons clinker	NA
			THC [3 4] 24	ppmvd	7
6. New kiln	Normal operation	Major source	HCl 3	ppmvd	7
7. New kiln	Startup and shutdown	Major or area source	PM 0.0008	gr/dscf	NA
			D/F 0.2	ng/dscm (TEQ)	NA
			Mercury 4	ug/dscm	NA
			THC 24	ppmvd	NA
8. New kiln	Startup and shutdown	Major source	HCl 3	ppmvd	NA
9. Existing clinker cooler	Normal operation	Major or area source	PM 0.07	lb/ton clinker	NA
10. Existing clinker cooler	Startup and shutdown	Major or area source	PM 0.004	gr/dscf	NA
11. New clinker cooler	Normal operation	Major or area source	PM 0.02	lb/ton clinker	NA
12. New clinker cooler	Startup and shutdown	Major or area source	PM 0.0008	gr/dscf	NA
13. Existing or new raw material dryer.	Normal operation	Major or area source	THC [3 4] 24	ppmvd	NA
14. Existing or new raw material dryer.	Startup and shutdown	Major or area source	THC 24	ppmvd	NA
15. Existing or new raw or finish mill.	All operating modes	Major source	Opacity 10	percent	NA
16. Open clinker storage piles.	All operating modes	Major or area source	Work practices (63.1343(c)).	NA	NA

[1] The initial and subsequent PM performance tests are performed using Method 5 and consists of three 1-hr tests.
[2] If the average temperature at the inlet to the first PM control device (fabric filter or electrostatic precipitator) during the D/F performance test is 400 °F or less this limit is changed to 0.040 ng/dscm.
[3] Measured as propane.
[4] Any source subject to the 24 ppmvd THC limit may elect to meet an alternative limit of 12 ppmvd for total organic HAP.

(2) When there is an alkali bypass associated with a kiln, the combined PM emissions from the kiln and the alkali bypass stack are subject to the PM emissions limit. Existing kilns that combine the clinker cooler exhaust and/or coal mill with the kiln exhaust for energy efficiency purposes and send the combined exhaust to the PM control device as a single stream may meet an alternative PM emissions limit. This limit is calculated using equation 1 of this section:

$$PM_{alt} = (0.0060 \times 1.65)(Q_k + Q_c + Q_{ab} + Q_{cm})/(7000) \quad \text{(Eq. 1)}$$

Where:

PM_{alt} = Alternative PM emission limit for commingled sources.
0.006 = The PM exhaust concentration (gr/dscf) equivalent to 0.070 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.
1.65 = The conversion factor of lb feed per lb clinker.
Qk = The exhaust flow of the kiln (dscf/ton raw feed).
Qc = The exhaust flow of the clinker cooler (dscf/ton feed).
Qab = The exhaust flow of the alkali bypass (dscf/ton feed).
Qcm = The exhaust flow of the coal mill (dscf/ton feed).
7000 = The conversion factor for grains (gr) per lb.

For new kilns that combine kiln exhaust and clinker cooler gas the limit is calculated using the equation 2 of this section:

$$PM_{alt} = (0.0020 \times 1.65)(Q_k + Q_c + Q_{ab} + Q_{cm})/(7000) \quad \text{(Eq. 2)}$$

Where:

PM_{alt} = Alternative PM emission limit for commingled sources.

0.002 = The PM exhaust concentration (gr/dscf) equivalent to 0.020 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.

1.65 = The conversion factor of lb feed per lb clinker.

Qk = The exhaust flow of the kiln (dscf/ton feed).

Qc = The exhaust flow of the clinker cooler (dscf/ton feed).

Qab = The exhaust flow of the alkali bypass (dscf/ton feed).

Qcm = The exhaust flow of the coal mill (dscf/ton feed).

7000 = The conversion factor for gr per lb.

(c) *Open Clinker Piles.* The owner or operator of an open clinker pile must prepare and operate in accordance with the fugitive dust emissions control measures, described in their operation and maintenance plan (see § 63.1347 of this subpart), that is appropriate for the site conditions as specified in paragraphs (c)(1) and (2) of this paragraph.

(1) The operations and maintenance plan must identify and describe the fugitive dust emissions control measures the owner or operator will use to minimize fugitive dust emissions from each open clinker storage pile.

(2) For open clinker storage piles, the operations and maintenance plan must specify that one or more of the following control measures will be used to minimize to the greatest extent practicable fugitive dust from open clinker storage piles: Locating the source inside a partial enclosure, installing and operating a water spray or fogging system, applying appropriate chemical dust suppression agents on the source, use of a wind barrier, compaction, or use of a vegetative cover. The owner or operator must select, for inclusion in the operations and maintenance plan, the fugitive dust control measure or measures listed in this paragraph that are most appropriate for site conditions. The plan must also explain how the measure or measures selected are applicable and appropriate for site conditions. In addition, the plan must be revised as needed to reflect any changing conditions at the source.

(d) Emission limits in effect prior to September 9, 2010. Any source defined as an existing source in § 63.1351, and that was subject to a PM, mercury, THC, D/F, or opacity emissions limit prior to September 9, 2010, must continue to meet the limits shown in Table 2 to this section until September 9, 2015.

* * * * *

14. Section 63.1344 is amended by revising the section heading and revising the section to read as follows:

§ 63.1344 Affirmative defense for violation of emissions limit during malfunction.

In response to an action to enforce the standards set forth in paragraph § 63.1343(b) you may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The violation:

(i) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(4) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible consistent with safety and good air pollution control practices; and

(7) Your actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the affected source was operated in a manner consistent with good air pollution control practice for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(b) Report. The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. This affirmative defense report shall be included in the semiannual report required by section 63.1354(b)(9). The affirmative defense report shall be included in the first semiannual, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess the semiannual report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second semiannual compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

15. Section 63.1345 is amended by revising the section heading and revising the section to read as follows:

§ 63.1345 Emissions limits for affected sources other than kilns; clinker coolers; new and reconstructed raw material dryers; and open clinker piles.

The owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; bulk loading or unloading system; raw and finish mills; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart must not cause to be discharged any gases from these affected sources which exhibit opacity in excess of 10 percent.

16. Section 63.1346 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(1); and

c. Revising paragraphs (c) through (f).

The revisions read as follows:

§ 63.1346 Operating limits for kilns.

(a) The owner or operator of a kiln subject to a D/F emissions limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln PM control device (PMCD) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limit specified in paragraph (b) of this section. The owner or operator of an in-line kiln/raw mill subject to a D/F emissions limitation under § 63.1343 must operate the in-line kiln/raw mill, such that:

(1) When the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was operating, is not exceeded, except during periods of startup/shutdown when the temperature limit may be exceeded by no more than 10 percent.

* * * * *

(c) For an affected source subject to a D/F emissions limitation under § 63.1343 that employs sorbent injection as an emission control technique you must operate the sorbent injection system in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) The rolling three-hour average activated sorbent injection rate must be equal to or greater than the sorbent injection rate determined in accordance with § 63.1349(b)(3)(vi).

(2) You must either:

(i) Maintain the minimum activated carbon injection carrier gas flow rate, as a rolling three-hour average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c), or

(ii) Maintain the minimum activated carbon injection carrier gas pressure drop, as a rolling three-hour average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c).

(d) Except as provided in paragraph (e) of this section, for an affected source subject to a D/F emissions limitation under § 63.1343 that employs carbon injection as an emission control technique you must specify and use the brand and type of sorbent used during the performance test until a subsequent performance test is conducted, unless the site-specific performance test plan contains documentation of key parameters that affect adsorption and the owner or operator establishes limits based on those parameters, and the limits on these parameters are maintained.

(e) For an affected source subject to a D/F emissions limitation under § 63.1343 that employs carbon injection as an emission control technique you may substitute, at any time, a different brand or type of sorbent provided that the replacement has equivalent or improved properties compared to the sorbent specified in the site-specific performance test plan and used in the performance test. The owner or operator must maintain documentation that the substitute sorbent will provide the same or better level of control as the original sorbent.

(f) No kiln may use as a raw material or fuel any fly ash where the mercury content of the fly ash has been increased through the use of activated carbon, or any other sorbent, unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e., emissions not using the fly ash). The facility has the burden of proving there has been no emissions increase over baseline. Once the kiln must comply with a mercury emissions limit specified in § 63.1343, this paragraph no longer applies.

17. Section 63.1347 is amended by revising paragraph (a)(1) to read as follows:

§ 63.1347 Operation and maintenance plan requirements.

(a) * * *

(1) Procedures for proper operation and maintenance of the affected source and air pollution control devices in order to meet the emissions limits and operating limits, including fugitive dust control measures for open clinker piles, of §§ 63.1343 through 63.1348. Your operation and maintenance plan must address periods of startup and shutdown;

* * * * *

18. Section 63.1348 is amended by:

a. Revising paragraph (a) introductory text;

b. Removing paragraphs (a)(1)(i) and (ii);

c. Revising paragraphs (a)(1) through (a)(6);

d. Revising paragraph (b); and

e. Revising paragraph (c)(2)(iv).

The revisions read as follows:

§ 63.1348 Compliance requirements.

(a) *Initial Performance Test Requirements.* For an affected source subject to this subpart, you must demonstrate compliance with the emissions standards and operating limits by using the test methods and procedures in §§ 63.1349 and 63.7.

Note: The first day of the 30 operating day performance test is the first day following completion of the field testing and data collection that demonstrates that the CPMS or CEMS has satisfied the relevant CPMS performance evaluation or CEMS performance specification (e.g., PS 2, 12A, or 12B) acceptance criteria. The performance test period is complete at the end of the 30th consecutive operating day. See § 63.1341 for definition of operating day and § 63.1348(b)(1) for the CEMS operating requirements.

(1) *PM Compliance.* If you are subject to limitations on PM emissions under § 63.1343(b), you must demonstrate compliance with the PM emissions standards by using the test methods and procedures in § 63.1349(b)(1).

(2) *Opacity Compliance.* If you are subject to the limitations on opacity under § 63.1345, you must demonstrate compliance with the opacity emissions standards by using the performance test methods and procedures in § 63.1349(b)(2). Use the maximum 6-minute average opacity exhibited during the performance test period to determine whether the affected source is in compliance with the standard.

(3) *D/F Compliance.*

(i) If you are subject to limitations on D/F emissions under § 63.1343(b), you must demonstrate compliance with the D/F emissions standards by using the performance test methods and procedures in § 63.1349(b)(3). The owner or operator of a kiln with an in-line raw mill must demonstrate compliance by conducting separate performance tests while the raw mill is operating and while the raw mill is not operating. Determine the D/F concentration for each run and calculate the arithmetic average of the concentrations measured for the three runs to determine continuous compliance.

(ii) If you are subject to a D/F emissions limitation under § 63.1343(b), you must demonstrate compliance with the temperature operating limits specified in § 63.1346 by using the performance test methods and procedures in § 63.1349(b)(3)(ii) through (b)(3)(iv). Use the arithmetic average of the temperatures measured during the three runs to determine the applicable temperature limit.

(iii) If activated carbon injection is used and you are subject to a D/F emissions limitation under § 63.1343(b), you must demonstrate compliance with the activated carbon injection rate operating limits specified in § 63.1346

by using the performance test methods and procedures in § 63.1349(b)(3)(v). The average of the run injection rates will determine the applicable injection rate limit.

(iv) If activated carbon injection is used, you must also develop a carrier gas parameter (either the carrier gas flow rate or the carrier gas pressure drop) during the initial and updated during any subsequent performance test conducted under § 63.1349(b)(3) that meets the requirements of § 63.1349(b)(3)(vi). Compliance is demonstrated if the system is maintained within +/− 5 percent accuracy during the performance test determined in accordance with the procedures and criteria submitted for review in your monitoring plan required in section 63.1350(p).

(4)(i) *THC Compliance.*

(A) If you are subject to limitations on THC emissions under § 63.1343(b), you must demonstrate compliance with the THC emissions standards by using the performance test methods and procedures in § 63.1349(b)(4)(i). You must use the average THC concentration obtained during the first 30 kiln operating days after the compliance date of this rule to determine initial compliance.

(B) For sources equipped with an alkali bypass stack or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS, you may use the results of the initial and subsequent performance test to demonstrate compliance with the THC emissions limit.

(ii) *Total Organic HAP Emissions Tests.* If you elect to demonstrate compliance with the total organic HAP emissions limit under § 63.1343(b) in lieu of the THC emissions limit, you must demonstrate compliance with the total organic HAP emissions standards by using the performance test methods and procedures in § 63.1349(b)(4)(iii) and (b)(4)(iv).

(iii) If you are demonstrating initial compliance, you must conduct the separate performance tests as specified in § 63.1349(b)(4)(iii) while the raw mill kiln is operating and while the raw mill of the kiln is not operating.

(iv) The average total organic HAP concentration measured during the separate initial performance test specified by § 63.1349(b)(4)(iii) must be used to determine initial compliance.

(v) The average THC concentration measured during the initial performance test specified by § 63.1349(b)(4)(iv) must be used to determine the site-specific THC limit. Using the fraction of time the raw mill is on and the fraction of time that the raw mill is off, calculate this limit as a weighted average of the THC levels measured during raw mill on and raw mill off testing.

(5) *Mercury Compliance.* If you are subject to limitations on mercury emissions in § 63.1343(b), you must demonstrate compliance with the mercury standards by using the performance test methods and procedures in § 63.1349(b)(5). You must demonstrate compliance by operating a mercury CEMS or a sorbent trap based CEMS. Compliance with the mercury emissions standard must be determined based on the first 30 operating days you operate a mercury CEMS after the compliance date of this rule.

In calculating a 30 operating day emissions value using an integrating sorbent trap CEMS, assign the average Hg emissions concentration determined for an integrating period (e.g., 7 day sorbent trap sample) to each relevant hour of the kiln operating days spanned by each integrated sample. Calculate the 30 kiln operating day emissions rate value using the assigned hourly Hg emissions concentrations and the respective flow and production rate values collected during the 30 kiln operating day performance test period. Depending on the duration of each integrated sampling period, you may not be able to calculate the 30 kiln operating day emissions value until several days after the end of the 30 kiln operating day performance test period.

For example, a sorbent trap CEMS producing an integrated 7-day sample will provide Hg concentration data for each hour of the first 28 kiln operating days (i.e., four values spanning 7 days each) of a 30 operating day period. The Hg concentration values for the hours of the last 2 days of the 30 operating day period will not be available for calculating the emissions for the performance test period until at least five days after the end of the subject period.

(6) *HCl Compliance.* If you are subject to limitations on HCl emissions under § 63.1343(b), you must demonstrate initial compliance with the HCl standards by using the performance test methods and procedures in § 63.1349(b)(6).

(i) For an affected source that is equipped with a wet scrubber, tray tower or dry scrubber, you must demonstrate initial compliance by conducting a performance test as specified in § 63.1349(b)(6)(i). You must determine the HCl concentration for each run and calculate the arithmetic average of the concentrations measured for the three runs to determine compliance. You must also have established appropriate site-specific operational parameter limits.

(ii) For an affected source that is not equipped with a wet scrubber, tray tower or dry scrubber, you must demonstrate initial compliance by operating a CEMS as specified in § 63.1349(b)(6)(ii). You must use the average of the hourly HCl concentration obtained during the first 30 kiln operating days that occur after the compliance date of this rule to determine initial compliance.

(iii) For sources equipped with an alkali bypass stack or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS, you may use the results of the initial and subsequent performance test to demonstrate compliance with the HCl emissions limit.

(iv) As an alternative to paragraph (i), you may use an SO_2 CEMS to establish an SO_2 operating level during your initial and repeat HCl performance tests as specified in § 63.1349(b)(6)(iii).

(b) *Continuous Monitoring Requirements.* You must demonstrate compliance with the emissions standards and operating limits by using the performance test methods and procedures in §§ 63.1350 and 63.8 for each affected source.

(1) *General Requirements.*

(i) You must monitor and collect data according to § 63.1350 and the site-specific monitoring plan required by § 63.1350(p).

(ii) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), you must operate the monitoring system and collect data at all required intervals at all times the affected source is operating.

(iii) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(iv) *Clinker Production.* If you are subject to limitations on PM emissions (lb/ton of clinker) or mercury (lb/MM tons of clinker) under § 63.1343(b), you must determine the hourly production rate of clinker according to the requirements of § 63.1350(d).

(2) *PM Compliance.* If you are subject to limitations on PM emissions under § 63.1343(b), you must use the monitoring methods and procedures in § 63.1350(b) and (d).

(3) *Opacity Compliance.* If you are subject to the limitations on opacity under § 63.1345, you must demonstrate compliance using the monitoring methods and procedures in § 63.1350(f) based on the maximum 6-minute average opacity exhibited during the performance test period. You must initiate corrective actions within one hour of detecting visible emissions above the applicable limit.

(i) *COMS.* If you install a COMS in lieu of conducting the daily visible emissions testing, you must demonstrate compliance using a COMS such that it is installed, operated, and maintained in accordance with the requirements of § 63.1350(f)(4)(i).

(ii) Bag leak determination system (*BLDS).* If you install a BLDS on a raw mill or finish mill in lieu of conducting the daily visible emissions testing, you must demonstrate compliance using a BLDS that is installed, operated, and maintained in accordance with the requirements of § 63.1350(f)(4)(ii).

(4) *D/F Compliance.* If you are subject to a D/F emissions limitation under § 63.1343(b), you must demonstrate compliance using a CMS that is installed, operated and maintained to record the temperature of specified gas streams in accordance with the requirements of § 63.1350(g).

(5)(i) *Activated Carbon Injection Compliance.* If you use activated carbon injection to comply with the D/F emissions limitation under § 63.1343(b), you must demonstrate compliance using a CMS that is installed, operated, and maintained to record the rate of activated carbon injection in accordance with the requirements § 63.1350(h)(1).

(ii) If you use activated carbon injection to comply with the D/F emissions limitation under § 63.1343(b), you must demonstrate compliance using a CMS that is installed, operated and maintained to record the activated carbon injection system gas parameter in accordance with the requirements § 63.1350(h)(2).

(6) *THC Compliance.* (i) If you are subject to limitations on THC emissions under § 63.1343(b), you must demonstrate compliance using the monitoring methods and procedures in § 63.1350(i) and (j).

(ii) For sources equipped with an alkali bypass stack or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS, you may use the results of the initial and subsequent performance test to demonstrate compliance with the THC emissions limit. THC must be measured upstream of the coal mill.

(7) *Mercury Compliance.* If you are subject to limitations on mercury emissions in § 63.1343(b), you must demonstrate compliance using the monitoring methods and procedures in § 63.1350(k).

If you use an integrated sorbent trap Hg CEMS to determine ongoing compliance, use the procedures described in § 63.1348(a)(5) to assign hourly mercury concentration values and to calculate rolling 30 operating data emissions rates. Since you assign the mercury concentration measured with the sorbent trap to each relevant hour respectively for each operating day of the integrated period, you may schedule the sorbent change periods to any time of the day (i.e., the sorbent trap replacement need not be scheduled at 12:00 midnight nor must the sorbent trap replacements occur only at integral 24-hour intervals).

(8) *HCl Compliance.* If you are subject to limitations on HCl emissions under § 63.1343(b), you must demonstrate compliance using the performance test methods and procedures in § 63.1349(b)(6).

(i) For an affected source that is not equipped with a wet scrubber, tray tower or a dry sorbent injection system, you must demonstrate compliance using the monitoring methods and procedures in § 63.1350(l)(1).

(ii) For an affected source that is equipped with a wet scrubber, tray tower or a dry sorbent injection system, you must demonstrate compliance using the monitoring methods and procedures in § 63.1350(l)(2).

(iii) For sources equipped with an alkali bypass stack or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS, you may use the results of the initial and subsequent performance test to demonstrate compliance with the HCl emissions limit.

(iv) As an alternative to paragraph (ii), you may use an SO_2 CEMS to establish an SO_2 operating level during your initial and repeat HCl performance tests and monitor the SO_2 level using the procedures in § 63.1350(l)(3).

(c) * * *

(2) * * *

(iv) The performance test must be completed within 360 hours after the planned operational change period begins.

* * * * *

19. Section 63.1349 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b)(1);

c. Revising paragraph (b)(3) introductory text;

d. Revising paragraphs (b)(3)(v) and (b)(3)(vi);

e. Revising paragraphs (b)(4), (b)(5), and (b)(6); and

f. Revising paragraphs (c), (d) and (e).

The revisions read as follows:

§ 63.1349 Performance testing requirements.

(a) You must document performance test results in complete test reports that contain the information required by paragraphs (a)(1) through (a)(10) of this section, as well as all other relevant information. As described in § 63.7(c)(2)(i), you must make available to the Administrator prior to testing, if requested, the site-specific test plan to be followed during performance testing.

* * * * *

(b)(1) *PM Emissions Tests.*

(i) The owner or operator of a kiln subject to limitations on PM emissions shall demonstrate initial compliance by conducting a performance test as specified in paragraphs (b)(1)(ii) of this section.

(A) In using a PM CPMS to demonstrate compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (b)(1)(i)(B) through (D) and (b)(1)(ii) and (iii) of this section.

(B) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (e.g., milliamps, stack concentration, or other raw data signal) from the PM CPMS for the periods corresponding to the test runs (e.g., three 1-hour average PM OK CPMS output values for three 1-hour test runs).

(C) Determine your operating limit as the highest 1-hour average PM CPMS output value recorded during the performance test. You must verify an existing or establish a new operating limit after each repeated performance test. You must repeat the performance test annually and reassess and adjust the site-specific operating limit in accordance with the results of the performance test.

(D) To determine continuous compliance, you must record the PM

CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. You must demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (e.g., milliamps, PM concentration, raw data signal) on a 30 operating day rolling average basis, updated at the end of each new kiln operating day. Use Equation 3 to determine the 30 kiln operating day average.

$$30\text{kiln operating day} = \frac{\sum_{i=1}^{n} Hpv_i}{n} \qquad \text{(Eq. 3)}$$

Where:

Hpvi = The hourly parameter value for hour i and n is the number of valid hourly parameter values collected over 30 kiln operating days.

(ii) Use EPA Method 5 of appendix A to part 60 of this chapter to determine PM emissions. For each performance test, conduct three separate runs under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. Conduct each test run to collect a minimum sample volume of 2 dscm for determining compliance with a new source limit and 1 dscm for determining compliance with a existing source limit. Calculate the average of the results from three runs to determine compliance. You need not determine the PM collected in the impingers (''back half'') of the Method 5 particulate sampling train to demonstrate compliance with the PM standards of this subpart. This shall not preclude the permitting authority from requiring a determination of the ''back half'' for other purposes.

(iii) When there is an alkali bypass associated with a kiln, the main exhaust and alkali bypass of the kiln must be tested simultaneously and the combined emission rate of PM from the kiln and alkali bypass must be computed for each run using equation 4 of this section. For purposes of calculating the combined kiln and alkali bypass emissions, you may use the results of the initial and subsequent Method 5 performance test for the alkali bypass, instead of installing a CEMS, to demonstrate compliance with the PM emissions limit.

$$E_c = \frac{E_K + E_B}{P} \qquad \text{(Eq. 4)}$$

Where:

E_C = Combined hourly emission rate of PM from the kiln and bypass stack, lb/ton of kiln clinker production;

E_K = Hourly emissions of PM emissions from the kiln, lb;

E_B = Hourly PM emissions from the alkali bypass stack, lb;

P = Hourly clinker production, tons.

(iv) The owner or operator of a kiln with an in-line raw mill and subject to limitations on PM emissions shall demonstrate initial compliance by conducting separate performance tests while the raw mill is under normal operating conditions and while the raw mill is not operating.

* * * * *

(3) *D/F Emissions Tests.* If you are subject to limitations on D/F emissions under this subpart, you must conduct a performance test using Method 23 of appendix A–7 to part 60 of this chapter. If your kiln or in-line kiln/raw mill is equipped with an alkali bypass, you must conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. You may conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is operating or not operating.

* * * * *

(v)(A) If sorbent injection is used for D/F control, you must record the rate of sorbent injection to the kiln exhaust, and where applicable, the rate of sorbent injection to the alkali bypass exhaust, continuously during the period of the Method 23 test in accordance with the conditions in § 63.1350(m)(9), and include the continuous injection rate record(s) in the performance test report. Determine the sorbent injection rate parameters in accordance with paragraphs (b)(3)(vi) of this section.

(B) Include the brand and type of sorbent used during the performance test in the performance test report.

(C) Maintain a continuous record of either the carrier gas flow rate or the carrier gas pressure drop for the duration of the performance test. If the carrier gas flow rate is used, determine, record, and maintain a record of the accuracy of the carrier gas flow rate monitoring system according to the procedures in appendix A to part 75 of this chapter. If the carrier gas pressure drop is used, determine, record, and maintain a record of the accuracy of the carrier gas pressure drop monitoring system according to the procedures in § 63.1350(m)(6).

(vi) Calculate the run average sorbent injection rate for each run and determine and include the average of the run average injection rates in the performance test report and determine the applicable injection rate limit in accordance with § 63.1346(c)(1).

(4)(i) *THC Emissions Test.*

(A) If you are subject to limitations on THC emissions, you must operate a continuous emissions monitoring system (CEMS) in accordance with the requirements in § 63.1350(i). For the purposes of conducting the accuracy and quality assurance evaluations for CEMS, the THC span value (as propane) is 50 ppmvd and the reference method (RM) is Method 25A of appendix A to part 60 of this chapter.

(B) Use the THC CEMS to conduct the initial compliance test for the first 30 kiln operating days of kiln operation after the compliance date of the rule. See 63.1348(a).

(C) If kiln gases are diverted through an alkali bypass or to a coal mill and exhausted through a separate stack, you must calculate a kiln-specific THC limit using equation 5:

$$Cks = \frac{(MACT\ Limit \times (Qab + Qcm + Qks)) - (Qab \times Cab) - (Qcm \times Ccm)}{Qks} \quad \text{(Eq. 5)}$$

Where:
Cks = Kiln stack concentration (ppmvd)
Qab = Alkali bypass flow rate (volume/hr)
Cab = Alkali bypass concentration (ppmvd)
Qcm = Coal mill flow rate (volume/hr)
Ccm = Coal mill concentration (ppmvd)
Qks = Kiln stack flow rate (volume/hr)

(D) For sources equipped with an alkali bypass stack or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS, you may use the results of the initial and subsequent performance test to demonstrate compliance with the THC emissions limit. THC must be measured upstream of the coal mill.

(ii) *Total Organic HAP Emissions Tests.* Instead of conducting the performance test specified in paragraph (b)(4)(i) of this section, you may conduct a performance test to determine emissions of total organic HAP by following the procedures in paragraphs (b)(4)(iii) through (b)(4)(iv) of this section.

(iii) Use Method 320 of appendix A to this part, Method 18 of Appendix A of part 60, ASTM D6348–03 or a combination to determine emissions of total organic HAP. Each performance test must consist of three separate runs under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). Each run must be conducted for at least 1 hour. You must conduct the performance test while the raw mill of the kiln is operating and while the raw mill of the kiln is not operating.

(iv) At the same time that you are conducting the performance test for total organic HAP, you must also determine a site-specific THC emissions limit by operating a CEMS in accordance with the requirements of § 63.1350(j). The duration of the performance test must be 3 hours and the highest 1-hour average THC concentration (as calculated from the 1-minute averages) during the 3-hour test must be calculated. Using the fraction of time the raw mill is on and the fraction of time that the raw mill is off, calculate this limit as a weighted average of the THC levels measured during raw mill on and raw mill off testing.

(v) You must repeat the performance test for organic HAP according to paragraph (b)(4)(iii) and (iv) of this section no later than 12 months after your last test to confirm compliance with the organic HAP emissions limit and to re-establish your site-specific THC emissions limit.

(vi) If the THC level exceeds by 10 percent or more your site-specific THC emissions limit, you must

(A) As soon as possible but no later than 30 days after the exceedance, conduct an inspection and take corrective action to return the THC CEMS measurements to within the established value; and

(B) Within 90 days of the exceedance or at the time of the annual compliance test, whichever comes first, conduct another performance test to determine compliance with the organic HAP limit and to verify or re-establish your site-specific THC emissions limit.

(5) *Mercury Emissions Tests.* If you are subject to limitations on mercury emissions, you must operate a mercury CEMS in accordance with the requirements of § 63.1350(k). The initial compliance test must be based on the first 30 kiln operating days in which the affected source operates using a mercury CEMS after the compliance date of the rule. See § 63.1348(a).

(i) If you are using a mercury CEMS or a sorbent trap monitoring system, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to the requirements in § 63.1350(k)(5).

(ii) Calculate the emission rate using the equations 6 of this section:

$$E_{30D} = \frac{1}{n}\sum_{i=1}^{n} C_i Q_i / K \quad \text{(Eq. 6)}$$

Where:
E_{30D} = 30-day rolling emission rate of mercury, lb/MM tons clinker;
C_i = Concentration of mercury for operating hour i, µg/scm;
Q_i = Volumetric flow rate of effluent gas for operating hour i, where C_s and Q_s are on the same basis (either wet or dry), scm/hr;
K = Conversion factor, 1 lb/454,000,000 µg;
n = Number of kiln operating hours in a 30 kiln operating day period, n = 1 to 720.

(6) *HCl Emissions Tests.* For a source subject to limitations on HCl emissions you must conduct performance testing by one of the following methods:

(i)(A) If the source is equipped with a wet scrubber, tray tower or dry scrubber, you must conduct performance testing using Method 321 of appendix A to this part unless you have installed a CEMS that meets the requirements § 63.1350(l)(1).

(B) You must establish site specific parameter limits by using the CPMS required in § 63.1350(l)(1). For a wet scrubber or tray tower, measure and record the pressure drop across the scrubber and/or liquid flow rate and pH in intervals of no more than 15 minutes during the HCl test. Compute and record the 24-hour average pressure drop, pH, and average scrubber water flow rate for each sampling run in which the applicable emissions limit is met. For a dry scrubber, measure and record the sorbent injection rate in intervals of no more than 15 minutes during the HCl test. Compute and record the 24-hour average sorbent injection rate and average sorbent injection rate for each sampling run in which the applicable emissions limit is met.

(ii)(A) If the source is not controlled by a wet scrubber, tray tower or dry sorbent injection system, you must operate a CEMS in accordance with the requirements of § 63.1350(l)(1). See § 63.1348(a).

(B) The initial compliance test must be based on the 30 kiln operating days that occur after the compliance date of this rule in which the affected source operates using a HCl CEMS. Hourly HCl concentration data must be obtained according to § 63.1350(l).

(iii) As an alternative to paragraph (i), you may choose to monitor SO_2 emissions using a CEMS in accordance with the requirements of § 63.1350(l)(3). You must establish an SO_2 operating limit equal to the highest 1 hour average recorded during the HCl stack test. This operating limit will apply only for demonstrating HCl compliance.

(iv) If kiln gases are diverted through an alkali bypass or to a coal mill and

exhausted through a separate stack, you must calculate a kiln-specific HCl limit using equation 7:

$$Cks = \frac{(MACT\ Limit \times (Qab + Qcm + Qks)) - (Qab \times Cab) - (Qcm \times Ccm)}{Qks} \quad \text{(Eq. 7)}$$

Where:

Cks = Kiln stack concentration (ppmvd)
Qab = Alkali bypass flow rate (volume/hr)
Cab = Alkali bypass concentration (ppmvd)
Qcm = Coal mill flow rate (volume/hr)
Ccm = Coal mill concentration (ppmvd)
Qks = Kiln stack flow rate (volume/hr)

(c) *Performance Test Frequency.* Except as provided in § 63.1348(b), performance tests are required at regular intervals for affected sources that are subject to a dioxin or HCl emissions limit and must be repeated every 30 months except for pollutants where that specific pollutant is monitored using CEMS. Tests for PM and total organic HAP are repeated every 12 months.

(d) *Performance Test Reporting Requirements.*

(1) You must submit the information specified in paragraphs (d)(1) and (d)(2) of this section no later than 60 days following the initial performance test. All reports must be signed by a responsible official.

(i) The initial performance test data as recorded under paragraph (b) of this section.

(ii) The values for the site-specific operating limits or parameters established pursuant to paragraphs (b)(3), (b)(4)(iii), (b)(5)(ii), and (b)(6)(i) of this section, as applicable, and a description, including sample calculations, of how the operating parameters were established during the initial performance test.

(2) As of December 31, 2011 and within 60 days after the date of completing each performance evaluation or test, as defined in § 63.2, conducted to demonstrate compliance with any standard covered by this subpart, you must submit the relative accuracy test audit data and performance test data, except opacity data, to the EPA by successfully submitting the data electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool(ERT) (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html/*).

(e) Conditions of performance tests. Conduct performance tests under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

20. Section 63.1350 is amended by:

a. Revising paragraphs (a) through (d);

b. Revising paragraph (f) introductory text;

c. Revising paragraphs (f)(1)(iv) through (f)(1)(vi);

d. Revising paragraphs (f)(2)(i) and (f)(2)(iii);

e. Revising paragraphs (f)(3) and (f)(4);

f. Revising paragraph (g)(1) introductory text;

g. Revising paragraphs (g)(2) and (g)(4);

h. Revising paragraph (h)(1)(ii);

i. Revising paragraphs (i)(1) and (i)(2);

j. Adding paragraph (i)(3);

k. Revising paragraph (k);

l. Revising paragraph (l);

m. Revising paragraph (m) introductory text;

n. Revising paragraph (m)(7)(i);

o. Revising introductory text for paragraphs (m)(9);

p. Revising paragraph (m)(10), and paragraph (m)(11)(v);

q. Revising introductory text for paragraphs (n), (o), and (p);

r. Removing and reserving paragraph (n)(3); and

s. Revising introductory text for paragraphs (p)(1), (p)(2), and (p)(5).

The revisions read as follows:

§ 63.1350 Monitoring requirements.

(a)(1) Following the compliance date, the owner or operator must demonstrate compliance with this subpart on a continuous basis by meeting the requirements of this section.

(2) All continuous monitoring data for periods of startup and shutdown must be compiled and averaged separately from data gathered during other operating periods.

(3) For each existing unit that is equipped with a CMS, maintain the average emissions or the operating parameter values within the operating parameter limits established through performance tests.

(4) Any instance where the owner or operator fails to comply with the continuous monitoring requirements of this section is a deviation.

(b) *PM Monitoring Requirements.*

(1)(i) *PM CPMS.* You will use a PM CPMS to establish a site-specific operating limit corresponding to the results of the performance test demonstrating compliance with the PM limit. You will conduct your performance test using Method 5 at appendix A–3 to part 60 of this chapter. You will use the PM CPMS to demonstrate continuous compliance with this operating limit. You must repeat the performance test annually and reassess and adjust the site-specific operating limit in accordance with the results of the performance test.

(ii) To determine continuous compliance, you must record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. You must demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (e.g., milliamps, PM concentration, raw data signal) on a 30 operating day rolling average basis, updated at the end of each new kiln operating day.

(iii) For any deviation of the 30 process operating day PM CPMS average value from the established operating parameter limit, you must

(A) Within 48 hours of the deviation, visually inspect the APCD;

(B) If inspection of the APCD identifies the cause of the deviation, take corrective action as soon as possible, and return the PM CPMS measurement to within the established value; and

(C) Within 45 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify or re-establish the CPMS operating limit. You are not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this paragraph.

(iv) PM CPMS deviations from the operating limit leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a separate violation of this subpart.

(2) *Kilns equipped with an alkali bypass.* If kiln gases are diverted through an alkali bypass, you must account for the PM emitted from the alkali bypass stack by following the procedures in (b)(2)(i) through (v) of this section:

(i) You must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere from the alkali bypass stack according to the requirements in paragraphs (n)(1) through (n)(10) of this section.

(ii) Develop a PM emissions factor by conducting annual performance tests using Method 5 to measure the concentration of PM in the gases exhausted from the alkali bypass stack.

(iii) On a continuous basis, determine the mass emissions of PM in pounds per hour from the alkali bypass exhaust by using the PM emissions factor and the continuously measured exhaust gas flow rates.

(iv) Sum the hourly PM emissions from the kiln and alkali bypass to determine total hourly PM emissions. Using hourly clinker production, calculate the hourly emissions rate in pounds per ton of clinker to determine your 30 day rolling average.

(v) If you monitor compliance using a PM CPMS, you must determine compliance according to paragraphs (b)(3)(v)(A) through (C) of this section:

(A) Conduct an annual performance test using Method 5 to determine total PM emissions from the alkali bypass and kiln.

(B) To determine continuous compliance, you must establish your PM CPMS operating limit according to paragraph (b)(1) of this section.

(C) You must establish the maximum exhaust gas flow rate for the alkali bypass during your annual performance test. You must continuously monitor the flow rate until the next performance test. If there is a deviation of the monitored flow rate from the maximum established during your last performance test by more than 10 percent, you must retest the kiln and alkali bypass to determine compliance.

(c) [Reserved]

(d) *Clinker Production Monitoring Requirements.* If you are subject to an emissions limitation on PM or mercury emissions (lb/ton of clinker), you must:

(1) Determine hourly clinker production by one of two methods:

(i) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy, or

(ii) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of feed to the kiln. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln specific feed to clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. Update this ratio monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(iii) [Reserved]

(2) Determine, record, and maintain a record of the accuracy of the system of measuring hourly clinker production (or feed mass flow if applicable) before initial use (for new sources) or by the effective compliance date of this rule (for existing sources). During each quarter of source operation, you must determine, record, and maintain a record of the ongoing accuracy of the system of measuring hourly clinker production (or feed mass flow).

(3) If you measure clinker production directly, record the daily clinker production rates; if you measure the kiln feed rates and calculate clinker production, record the daily kiln feed and clinker production rates.

(4) Develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(e) [Reserved]

(f) *Opacity Monitoring Requirements.* If you are subject to a limitation on opacity under § 63.1345, you must conduct required opacity monitoring in accordance with the provisions of paragraphs (f)(1)(i) through (f)(1)(vii) of this section and in accordance with your monitoring plan developed under § 63.1350(p). You must also develop an opacity monitoring plan in accordance with paragraphs (p)(1) through (p)(4) and paragraph (o)(5), if applicable, of this section.

(1) * * *

(iv) If visible emissions are observed during any Method 22 performance test, of appendix A–7 to part 60 of this chapter, you must conduct 30 opacity observations in accordance with Method 9 of appendix A–4 to part 60 of this chapter. The Method 9 performance test, of appendix A–4 to part 60 of this chapter, must begin within 1 hour of any observation of visible emissions.

(v) The requirement to conduct Method 22 visible emissions monitoring under this paragraph do not apply to any totally enclosed conveying system transfer point, regardless of the location of the transfer point. The enclosures for these transfer points must be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan.

(vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, you must conduct a Method 22 performance test, of appendix A–7 to part 60 of this chapter, according to the requirements of paragraphs (f)(1)(i) through (f)(1)(iv) of this section for each such conveying system transfer point located within the building, or for the building itself, according to paragraph (f)(1)(vii) of this section.

* * * * *

(2)(i) For a raw mill or finish mill, you must monitor opacity by conducting daily visible emissions observations of the mill sweep and air separator PM control devices (PMCD) of these affected sources in accordance with the procedures of Method 22 of appendix A–7 to part 60 of this chapter. The duration of the Method 22 performance test must be 6 minutes.

* * * * *

(iii) If visible emissions are observed during the follow-up Method 22 performance test required by paragraph (f)(2)(ii) of this section from any stack from which visible emissions were observed during the previous Method 22 performance test required by paragraph (f)(2)(i) of the section, you must then conduct an opacity test of each stack from which emissions were observed during the follow up Method 22 performance test in accordance with Method 9 of appendix A–4 to part 60 of this chapter. The duration of the Method 9 test must be 30 minutes.

(3) If visible emissions are observed during any Method 22 visible emissions test conducted under paragraphs (f)(1) or (f)(2) of this section, you must initiate, within one hour, the corrective actions specified in your operation and maintenance plan as required in § 63.1347.

(4) The requirements under paragraph (f)(2) of this section to conduct daily Method 22 testing do not apply to any specific raw mill or finish mill equipped with a COMS or BLDS.

(i) If the owner or operator chooses to install a COMS in lieu of conducting the daily visible emissions testing required under paragraph (f)(2) of this section, then the COMS must be installed at the outlet of the PM control device of the raw mill or finish mill and the COMS must be installed, maintained,

calibrated, and operated as required by the general provisions in subpart A of this part and according to PS–1 of appendix B to part 60 of this chapter.

(ii) If you choose to install a BLDS in lieu of conducting the daily visible emissions testing required under paragraph (f)(2) of this section, the requirements in paragraphs (m)(1) through (m)(4), (m)(10) and (m)(11) of this section apply.

(g) * * *

(1) You must install, calibrate, maintain, and continuously operate a CMS to record the temperature of the exhaust gases from the kiln and alkali bypass, if applicable, at the inlet to, or upstream of, the kiln and/or alkali bypass PMCDs.

* * * * *

(2) You must monitor and continuously record the temperature of the exhaust gases from the kiln and alkali bypass, if applicable, at the inlet to the kiln and/or alkali bypass PMCD.

* * * * *

(4) Calculate the rolling three-hour average temperature using the average of 180 successive one-minute average temperatures. See § 63.1349(b)(3).

* * * * *

(h) * * *

(1) * * *

(ii) Each hour, calculate the three-hour rolling average activated carbon injection rate for the previous 3 hours of process operation. See § 63.1349(b)(3).

* * * * *

(i) * * *

(1) You must install, operate, and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8A of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part. The owner or operator must operate and maintain each CEMS according to the quality assurance requirements in Procedure 1 of appendix F in part 60 of this chapter.

(2) For sources equipped with an alkali bypass stack or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS, you may use the results of the initial and subsequent performance test to demonstrate compliance with the THC emissions limit.

(3) Performance tests on alkali bypass and coal mill stacks must be conducted using Method 25A in appendix A to 40 CFR part 60 and repeated annually.

* * * * *

(k) *Mercury Monitoring Requirements.* If you have a kiln subject to an emissions limitation on mercury emissions, you must install and operate a mercury continuous emissions monitoring system (Hg CEMS) in accordance with Performance Specification 12A (PS 12A) of appendix B to part 60 of this chapter or a sorbent trap-based integrated monitoring system in accordance with Performance Specification 12B (PS 12B) of appendix B to part 60 of this chapter. You must monitor mercury continuously according to paragraphs (k)(1) through (k)(5) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) You must use a span value for any Hg CEMS that represents the mercury concentration corresponding to approximately two times the emissions standard rounded up to the nearest multiple of 5 $\mu g/m^3$ of total mercury. As specified in PS 12A, Section 6.1.1, the data recorder output range must include the full range of expected Hg concentration values which would include those expected during ''mill off'' conditions.

(2) In order to quality assure data measured above the span value, you must use one of the options in paragraphs (k)(2)(i) through (k)(2)(iii) below.

(i) Include a second span that encompasses the Hg emission concentrations expected to be encountered during ''mill off'' conditions. This second span may be rounded to a multiple of 5 $\mu g/m^3$ of total mercury. The requirements of PS–12A, shall be followed for this second span with the exception that a RATA with the mill off is not required.

(ii) Conduct an additional 'above span' daily calibration using a Hg reference gas standard at a concentration level between 50 and 85 percent of the highest hourly Hg concentration expected during ''mill off'' conditions. The 'above span' reference gas must meet the requirements of PS 12A, Section 7.1 and be introduced at the probe. The 'above span' calibration is successful if the value measured by the Hg CEMS is within 20 percent of the certified value of the reference gas. Record and report the results of this procedure as you would for a daily calibration.

(iii) If you choose not to conduct an additional daily calibration, then quality assure any data above the span value established in paragraph (k)(1) of this section using the following procedure. Any time the one hour average measured concentration of Hg exceeds the span value you must, within 24 hours, introduce a higher, 'above span' Hg reference gas standard to the Hg CEMS. The 'above span' reference gas must meet the requirements of PS 12A, Section 7.1, must be of a concentration level greater than 80 percent of the highest hourly concentration measured during the period of measurements above span, and must be introduced at the probe. Record and report the results of this procedure as you would for a daily calibration. The 'above span' calibration is successful if the value measured by the Hg CEMS is within 20 percent of the certified value of the reference gas. If the value measured by the Hg CEMS exceeds 20 percent of the certified value of the reference gas, then you must normalize the one-hour average stack gas values measured above the span during the 24-hour period preceding the 'above span' calibration for reporting based on the Hg CEMS response to the reference gas as follows:

$$\frac{Certified\ reference\ gas\ value}{Measured\ value\ of\ reference\ gas} \times Measured\ stack\ gas\ result = Normalized\ stack\ gas\ result$$

(3) You must operate and maintain each Hg CEMS or sorbent trap-based integrated monitoring system according to the quality assurance requirements in Procedure 5 of appendix F to part 60 of this chapter.

(4) Relative accuracy testing of mercury monitoring systems under PS 12A, PS 12B, or Procedure 5 must be conducted at normal operating conditions with the raw mill on.

(5) If you use a Hg CEMS or a sorbent trap-based integrated monitoring system, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to the requirements in paragraphs (n)(1) through (n)(10) of this section. If kiln gases are diverted through an alkali bypass or to a coal mill and exhausted through separate stacks, you must account for the mercury emitted from

those stacks by following the procedures in (k)(5)(i) through (v) of this section:

(i) You must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to the requirements in paragraphs (n)(1) through (n)(10) of this section.

(ii) Develop a mercury hourly mass emissions rate by conducting annual performance tests using Method 29 to measure the concentration of mercury in the gases exhausted from the alkali bypass and coal mill.

(iii) On a continuous basis, determine the mass emissions of mercury in pounds per hour from the alkali bypass and coal mill exhausts by using the mercury hourly emissions rate and the continuously measured exhaust gas flow rates.

(iv) Sum the hourly mercury emissions from the kiln, alkali bypass and coal mill to determine total mercury emissions. Using hourly clinker production, calculate the hourly emissions rate in pounds per ton of clinker to determine your 30 day rolling average.

(v) If mercury emissions from the coal mill are below the method detection limit for two consecutive annual performance tests, you may reduce the frequency of the performance tests of coal mills to once every 30 months. If the measured mercury concentration exceeds the method detection limit, you must revert to testing annually until two consecutive annual tests are below the method detection limit.

(6) If you operate an integrated sampling Hg CEMS conforming to PS 12B, you may use a monitoring period from 24 hours to 168 hours in length. You should use a monitoring period that is a multiple of 24 hours (except during relative accuracy testing as allowed in PS 12B).

(l) *HCl Monitoring Requirements.* If you are subject to an emissions limitation on HCl emissions in § 63.1343, you must monitor HCl emissions continuously according to paragraph (l)(1) or (2) and paragraphs (m)(1) through (m)(4) of this section or, if your kiln is controlled using a wet or dry scrubber or tray tower, you alternatively may monitor SO_2 emissions continuously according to paragraph (l)(3) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) If you monitor compliance with the HCl emissions limit by operating an HCl CEMS, you must do so in accordance with Performance Specification 15 (PS 15) of appendix B to part 60 of this chapter, or, upon promulgation, in accordance with any other performance specification for HCl CEMS in appendix B to part 60 of this chapter. You must operate, maintain, and quality assure an HCl CEMS installed and certified under PS 15 according to the quality assurance requirements in Procedure 1 of appendix F to part 60 of this chapter except that the Relative Accuracy Test Audit requirements of Procedure 1 must be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of PS 15. If you install and operate an HCl CEMS in accordance with any other performance specification for HCl CEMS in appendix B to part 60 of this chapter, you must operate, maintain and quality assure the HCl CEMS using the procedure of appendix F to part 60 of this chapter applicable to the performance specification. You must use Method 321 of appendix A to part 63 of this chapter as the reference test method for conducting relative accuracy testing. The span value and calibration requirements in paragraphs (l)(1)(i) and (l)(1)(ii) below apply to HCl CEMS other than those installed and certified under PS 15.

(i) You must use a span value for any HCl CEMS that represents the intended upper limit of the HCl concentration measurement range during normal ''mill on'' operation. The span value should be equivalent to approximately two times the emissions standard and it may be rounded to the nearest multiple of 5 ppm of HCl. The HCl CEMS data recorder output range must include the full range of expected HCl concentration values which would include those expected during ''mill off'' conditions.

(ii) In order to quality assure data measured above the span value, you must use one of the two options in paragraphs (l)(1)(ii)(A) and (l)(1)(ii)(B) below.

(A) Conduct an additional 'above span' daily calibration using a HCl reference gas standard at a concentration level between 50 and 85 percent of the highest hourly HCl concentration expected during ''mill off'' conditions. The 'above span' reference gas must meet the requirements of the applicable performance specification and be introduced at the probe. The 'above span' calibration is successful if the value measured by the HCl CEMS is within 20 percent of the certified value of the reference gas. If the value measured by the HCl CEMS is not within 20 percent of the certified value of the reference gas, then you must normalize the stack gas values measured above span as described in paragraph (l)(1)(ii)(C) below. Record and report the results of this procedure as you would for a daily calibration.

(B) If you choose not to conduct an additional calibration on a daily basis, then quality assure any data above the span value established in paragraph (l)(1)(i) of this section using the following procedure. Any time the average measured concentration of HCl exceeds or is expected to exceed the span value for greater than two hours you must, within a period 24 hours before or after the 'above span' period, introduce a higher, 'above span' HCl reference gas standard to the HCl CEMS. The 'above span' reference gas must meet the requirements of the applicable performance specification and be of a concentration level greater than or equal to 80 percent of the highest hourly concentration measured during the period of measurements above span, and must be introduced at the probe. Record and report the results of this procedure as you would for a daily calibration. The 'above span' calibration is successful if the value measured by the HCl CEMS is within 20 percent of the certified value of the reference gas. If the value measured by the HCl CEMS is not within 20 percent of the certified value of the reference gas, then you must normalize the stack gas values measured above span as described in paragraph (l)(1)(ii)(C) below. If the 'above span' calibration is conducted during the period when measured emissions are above span and there is a failure to collect the required minimum number of data points in an hour due to the calibration duration, then you must determine the emissions average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour.

(C) In the event that the 'above span' calibration is not successful (i.e., the HCl CEMS measured value is not within 20 percent of the certified value of the reference gas), then you must normalize the one-hour average stack gas values measured above the span during the 24-hour period preceding or following the 'above span' calibration for reporting based on the HCl CEMS response to the reference gas as follows:

$$\frac{Certified\ reference\ gas\ value}{Measured\ value\ of\ reference\ gas} \times Measured\ stack\ gas\ result = Normalized\ stack\ gas\ result$$

(2) Install, operate, and maintain a CMS to monitor wet scrubber or tray tower parameters, as specified in paragraphs (m)(5) and (m)(7) of this section, and dry scrubber, as specified in paragraph (m)(8) of this section.

(3) If the source is equipped with a wet or dry scrubber or tray tower, and you choose to monitor SO_2 emissions, monitor SO_2 emissions continuously according to the requirements of § 60.63(e) through (f) of part 60 subpart F of this chapter. If SO_2 levels increase above the 1 hour average SO_2 operating limit established during your performance test, you must

(i) As soon as possible but no later than 48 hours after you deviate from the established SO_2 value conduct an inspection and take corrective action to return the SO_2 emissions to within the operating limit; and

(ii) Within 60 days of the deviation or at the time of the next compliance test, whichever comes first, conduct an HCl emissions compliance test to determine compliance with the HCl emissions limit and to verify or re-establish the SO_2 CEMS operating limit.

(m) *Parameter Monitoring Requirements.* If you have an operating limit that requires the use of a CMS, you must install, operate, and maintain each continuous parameter monitoring system (CMS) according to the procedures in paragraphs (m)(1) through (4) of this section by the compliance date specified in § 63.1351. You must also meet the applicable specific parameter monitoring requirements in paragraphs (m)(5) through (m)(11) that are applicable to you.

* * * * *

(7) * * *

(i) Locate the pH sensor in a position that provides a representative measurement of wet scrubber or tray tower effluent pH.

* * * * *

(9) *Mass Flow Rate (for Sorbent Injection) Monitoring Requirements.* If you have an operating limit that requires the use of equipment to monitor sorbent injection rate (e.g., weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (m)(9)(i) through (iii) of this section. These requirements also apply to the sorbent injection equipment of a dry scrubber.

* * * * *

(10) *Bag leak detection monitoring requirements.* If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a BLDS as specified in paragraphs (m)(10)(i) through (viii) of this section.

(i) You must install and operate a BLDS for each exhaust stack of the fabric filter.

(ii) Each BLDS must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(iii) The BLDS must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 or fewer milligrams per actual cubic meter.

(iv) The BLDS sensor must provide output of relative or absolute PM loadings.

(v) The BLDS must be equipped with a device to continuously record the output signal from the sensor.

(vi) The BLDS must be equipped with an alarm system that will alert an operator automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located such that the alert is detected and recognized easily by an operator.

(vii) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a BLDS must be installed in each baghouse compartment or cell.

* * * * *

(11) * * *

(v) Cleaning the BLDS probe or otherwise repairing the BLDS; or

* * * * *

(n) *Continuous Flow Rate Monitoring System.* You must install, operate, calibrate, and maintain instruments, according to the requirements in paragraphs (n)(1) through (10) of this section, for continuously measuring and recording the stack gas flow rate to allow determination of the pollutant mass emissions rate to the atmosphere from sources subject to an emissions limitation that has a pounds per ton of clinker unit.

* * * * *

(3) [Reserved]

* * * * *

(o) *Alternate Monitoring Requirements Approval.* You may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the emission standards of this subpart, except for emission standards for THC, subject to the provisions of paragraphs (o)(1) through (o)(6) of this section.

* * * * *

(p) *Development and Submittal (Upon Request) of Monitoring Plans.* If you demonstrate compliance with any applicable emissions limit through performance stack testing or other emissions monitoring, you must develop a site-specific monitoring plan according to the requirements in paragraphs (p)(1) through (4) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under paragraph (o) of this section and § 63.8(f). If you use a BLDS, you must also meet the requirements specified in paragraph (p)(5) of this section.

(1) For each CMS required in this section, you must develop, and submit to the permitting authority for approval upon request, a site-specific monitoring plan that addresses paragraphs (p)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan, if requested, at least 30 days before your initial performance evaluation of your CMS.

* * * * *

(2) In your site-specific monitoring plan, you must also address paragraphs (p)(2)(i) through (iii) of this section.

* * * * *

(5) *BLDS Monitoring Plan.* Each monitoring plan must describe the items in paragraphs (p)(5)(i) through (v) of this section. At a minimum, you must retain records related to the site-specific monitoring plan and information discussed in paragraphs (m)(1) through (4), (m)(10) and (m)(11) of this section for a period of 5 years, with at least the first 2 years on-site;

* * * * *

21. Section 63.1351 is amended by:

a. Revising paragraphs (c) and (d); and

b. Adding paragraph (e).

The revisions and addition read as follows:

§ 63.1351 Compliance dates.

* * * * *

(c) The compliance date for existing sources for all the requirements that become effective on [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] will be September 9, 2015.].

(d) The compliance date for new sources is May 6, 2009 or startup, whichever is later.

(e) The compliance date for existing and new sources with the requirements for open clinker storage piles in § 63.1343(c) is [DATE 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or startup, whichever is later.

22. Section 63.1352 is amended by revising paragraph (b) to read as follows:

§ 63.1352 Additional test methods.

* * * * *

(b) Owners or operators conducting tests to determine the rates of emission of specific organic HAP from raw material dryers, and kilns at Portland cement manufacturing facilities, solely for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 320 of appendix A to this part, or Method 18 of appendix A to part 60 of this chapter.

23. Section 63.1353 is amended by adding paragraph (b)(6) to read as follows:

§ 63.1353 Notification Requirements.

* * * * *

(b) * * *

(6) Within 48 hours of a deviation that triggers retesting to establish compliance and new operating limits, notify the appropriate permitting agency of the planned performance tests. The notification requirements of § 63.7(e) and 63.9(e) do not apply to retesting required for deviations under this subpart.

* * * * *

24. Section 63.1354 is amended by:

a. Removing and reserving paragraphs (b)(4) and (5);

b. Revising paragraph (b)(9)(vi);

c. Adding paragraph (b)(9)(vii); and

d. Revising paragraph (c).

The revisions, addition, and deletion read as follows:

§ 63.1354 Reporting requirements.

* * * * *

(b) * * *

(9) * * *

(vi) For each PM, HCl, Hg, and THC CEMS or Hg sorbent trap monitoring system, within 60 days after the reporting periods, you must submit reports to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (*www.epa.gov/cdx*). You must use the appropriate electronic reporting form in CEDRI or provide an alternate electronic file consistent with EPA's reporting form output format. For each reporting period, the reports must include all of the calculated 30-operating day rolling average values derived from the CEMS or Hg sorbent trap monitoring systems.

(vii) In response to each deviation from an emissions standard or established operating parameter limit, the date, duration and description of each deviation and the specific actions taken for each deviation including inspections, corrective actions and repeat performance tests and the results of those actions.

* * * * *

(c) Reporting deviations due to startup, shutdown or malfunctions. For each deviation from a standard or emission limit caused by a startup, shutdown, or malfunction at an affected source, you must report the deviation in the semi-annual compliance report required by 63.1354(b)(9). The report must contain the date, time and duration, and the cause of each event (including unknown cause, if applicable), and a sum of the number of events in the reporting period. The report must list for each event the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over the emission limit for which the source failed to meet a standard, and a description of the method used to estimate the emissions. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1348(d), including actions taken to correct a malfunction.

* * * * *

25. Section 63.1355 is amended by:

a. Revising paragraphs (f) and (g)(1); and

b. Adding paragraph (h).

The revisions read as follows:

§ 63.1355 Recordkeeping requirements.

* * * * *

(f) The date, time and duration of each startup or shutdown which causes the source to exceed any applicable emission limitation, and (f)(i) through (iii) of this section;

(i) The date, time, and duration of each startup or shutdown period, for any affected source that is subject to an emission standard during startup or shutdown that differs from the emission standard applicable at other times.

(ii) The quantity and type of raw feed and fuel used during the startup or shutdown period.

(iii) An estimate of the volume of each regulated pollutant emitted over the emission limit during startup or shutdown, with a description of the method used to estimate emissions.

(g)(1) The date, time and duration of each malfunction that causes an affected source to fail to meet an applicable standard; if there was also a monitoring malfunction, the date, time and duration of the monitoring malfunction; the record must list the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet a standard, and a description of the method used to estimate the emissions.

* * * * *

(h) For each deviation from an emissions standard or established operating parameter limit, you must keep records of the date, duration and description of each deviation and the specific actions taken for each deviation including inspections, corrective actions and repeat performance tests and the results of those actions.

* * * * *

26. Section 63.1356 is amended by revising the section heading and the section text to read as follows:

§ 63.1356 Sources with multiple emissions limit or monitoring requirements.

If an affected facility subject to this subpart has a different emissions limit or requirement for the same pollutant under another regulation in title 40 of this chapter, the owner or operator of the affected facility must comply with the most stringent emissions limit or requirement and is exempt from the less stringent requirement.

27. Section 63.1357 is amended by:

a. Revising paragraph (a)(1); and

b. Revising paragraph (a)(2).

The revisions read as follows:

§ 63.1357 Temporary, conditioned exemption from particulate matter and opacity standards.

(a) * * *

(1) Any PM and opacity standards of part 60 or part 63 of this chapter that are applicable to cement kilns and clinker coolers.

(2) Any permit or other emissions or operating parameter or other limitation on workplace practices that are applicable to cement kilns and clinker coolers to ensure compliance with any PM and opacity standards of this part or part 60 of this chapter.

* * * * *

28. Table 1 to Subpart LLL of Part 63 is revised by revising the entries for 63.6(e)(3), 63.7(b), and 63.9(e) to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to Subpart LLL	Explanation
* * * * * * *			
63.6(e)(3)	Startup, Shutdown Malfunction Plan	No	Startup and shutdown plans addressed in § 63.1347.
* * * * * * *			
63.7(b)	Notification period	Yes	Except for repeat performance test caused by a deviation. See § 63.1353(b)(6).
* * * * * * *			
63.9(e)	Notification of performance test	Yes	Except for repeat performance test caused by a deviation. See § 63.1353(b)(6).
* * * * * * *			

[FR Doc. 2012–16166 Filed 7–17–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Wednesday,
No. 138 July 18, 2012

Part III

The President

Notice of July 17, 2012—The Continuation of the National Emergency With Respect to the Former Liberian Regime of Charles Taylor

Federal Register
Vol. 77, No. 138
Wednesday, July 18, 2012

Presidential Documents

Title 3—

The President

Notice of June 14, 2012

The Continuation of the National Emergency With Respect to the Former Liberian Regime of Charles Taylor

On July 22, 2004, by Executive Order 13348, the President declared a national emergency and ordered related measures, including the blocking of the property of certain persons connected to the former Liberian regime of Charles Taylor, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, which have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources.

Although Liberia has made advances to promote democracy, and the Special Court for Sierra Leone recently convicted Charles Taylor for war crimes and crimes against humanity, the actions and policies of Charles Taylor and others have left a legacy of destruction that could still challenge Liberia's transformation and recovery. Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on July 22, 2004, and the measures adopted on that date to deal with that emergency, must continue in effect beyond July 22, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13348.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
July 17, 2012.

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Federal Register

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H.R. 33/P.L. 112–142
Church Plan Investment Clarification Act (July 9, 2012; 126 Stat. 989)

H.R. 2297/P.L. 112–143
To promote the development of the Southwest waterfront in the District of Columbia, and for other purposes. (July 9, 2012; 126 Stat. 990)

S. 3187/P.L. 112–144
Food and Drug Administration Safety and Innovation Act (July 9, 2012; 126 Stat. 993)

Last List July 10, 2012

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